93-713

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM
Petitioner,

versus

THE SUPREME COURT OF FLORIDA, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

ISSUE ONE

WHETHER THE RESPONDENTS VIOLATED THE DUE PROCESS AND EQUAL PROTECTION REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY SELECTIVELY ENFORCING THE CODE OF JUDICIAL CONDUCT AGAINST PETITIONER FOR IMPERMISSIBLE REASONS.

ISSUE TWO

WHETHER THE RESPONDENTS VIOLATED THE FREEDOM OF SPEECH GUARANTEE OF THE FIRST AMENDMENT BY REMOVING THE PETITIONER FROM HIS OFFICE AS AN ELECTED JUDGE IN THE STATE OF FLORIDA FOR HAVING PUBLICLY CRITICIZED ATTORNEYS.

ISSUE THREE

WHETHER THE FLORIDA CODE OF JUDICIAL CONDUCT AS APPLIED VIOLATES THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT DUE TO VAGUENESS OF CONSTRUCTION.

ISSUE FOUR

WHETHER THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION VIOLATED THE DUE PROCESS REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY ACTING AS THE INVESTIGATOR, PROSECUTOR, JUDGE AND JURY.

ISSUE FIVE

WHETHER THE CONDUCT OF THE PROCEEDINGS IN THEIR TOTALITY RESULTED IN A FUNDAMENTALLY UNFAIR PROCEDURE THEREBY VIOLATING THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT.

PARTIES

The Petitioner is:

Gary G. Graham

The Respondents are:

The Supreme Court of Florida, and
The Florida Judicial Qualifications Commission

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES v

REFERENCE TO OFFICIAL REPORTS OF OPINIONS BELOW viii

JURISDICTION ix

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED x

STATEMENT OF THE CASE 1

ARGUMENT 6

ISSUE ONE 6

ISSUE TWO 11

ISSUE THREE 16

ISSUE FOUR 21

ISSUE FIVE 27

TABLE OF AUTHORITIES

Page

Constitutional Provisions

Federal:

The First Amendment to the Constitution of the United States . . . . . x, 9, 11, 14, 15, 20

The Fifth Amendment to the Constitution of the United States . . . . . x, 6, 9, 21

The Fourteenth Amendment to the Constitution of the United States . . . . . xi, 6, 9, 16, 21

State:

Article 5, Section 12 of the Florida Constitution . . . . . xii, A 867.5

Cases

United States Supreme Court Cases:

Baumgartner v. United States, 322 US 665 (1944) 9, 10, 13

Connick v. Myers, 461 US 138 (1983) 14

Gentile v. State Bar of Nevada, 501 US ____, 115 L.Ed.2d 888, 111 S.Ct. 2720 (1991) 8, 9, 10

TABLE OF AUTHORITIES Continued **Page**

Kolender v. Lawson,
461 US 352 (1983) 10

Offutt v. United States,
348 US 11 (1954) 27

Smith v. Goguen,
415 US 566 (1974) 10

Windmar v. Vincent,
454 US 263 (1981) 14

Withrow v. Larkin,
421 US 35 (1975) 21

United States Appellate Cases:

Morial v. Judiciary Commission,
565 F.2d 295 (5th Cir. 1977) 14

Scott v. Flowers,
910 F.2d 201 (5th Cir. 1990) 8, 9, 10, 15

U.S. v. McClain,
823 F.2d 1457 (11th Cir. 1987) 24

State Supreme Court Cases:

In Re Gary Graham,
620 So.2d 1273 (Fla. 1993) . . . . . viii, A 2

In Re Kelley,
238 So.2d 565 (Fla. 1970) 27

Judicial Inquiry and Review Board v. Snyder,
523 A.2d 294 (Pa. 1987) 15

TABLE OF AUTHORITIES Continued **Page**

Richardson v. State,
246 So.2d 771 (Fla. 1971) 25

State v. Judicial Standards Comm.,
643 P.2d 210 (Mont. 1982) 20

Florida Appellate Cases:

Fedd v. State,
461 So.2d 1384 (Fla. 1st DCA 1984) 25

Hall v. State,
477 So.2d 572 (Fla. 4th DCA 1985) 25

Jano v. State,
559 So.2d 1270 (Fla. 4th DCA 1990) 16

Rodriquez v. State,
378 So.2d 7 (Fla. 2d DCA 1979) 16

Wisconsin Statutes . . . . . xii, A 878.5

Other Resources

Florida Code of Judicial Conduct . . . . . xii, A 874.5

Florida Judicial Qualifications
Commission Rules . . . . . xii, A 762

Abbie G. Baynes, "Judicial Speech: A
First Amendment Analysis,"
6 *Georgetown Journal of Legal Ethics* 81
(Summer 1992) 13

Ben F. Overton, "Grounds for Judicial Discipline,"
54 *Chicago-Kent Law Review* 59 (1977) 19

REFERENCE TO OFFICIAL REPORTS OF OPINIONS BELOW

The judgment sought to be reviewed issued on June 24, 1993 and was rendered in the Florida Supreme Court as follows:

Inquiry Concerning a Judge, No. 91-415

RE: Gary G. Graham

Document No. 80,273

The official report is *In Re Gary G. Graham*, 620 So. 2d 1273 (Fla. 1993).

The opinion is included in the Appendix at (A 2).

JURISDICTION

The judgment for which review is sought was filed and became effective on June 24, 1993. By motion to this Honorable Court the length of time for the filing of this petition was extended up to and including November 8, 1993.

The judgment for which review is sought is a final judgment of the highest court of the State of Florida where review could be sought and where the judgment turns upon substantial federal questions. (A 2) Jurisdiction of the United States Supreme Court is pursuant to 28 United States Code, Section 1257, paragraph (3).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

FEDERAL CONSTITUTIONAL PROVISIONS

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of the law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

Section 1

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA CONSTITUTIONAL PROVISIONS

Article V, §12 (Reproduced in full at A 867.5).

FLORIDA CODE OF JUDICIAL CONDUCT

The applicable Canons of the Florida Code of Judicial Conduct are reproduced in full in the Appendix at (A 874.5).

FLORIDA JUDICIAL QUALIFICATION COMMISSION RULES

The Florida Judicial Qualification Commission Rules are reproduced in full in the Appendix at (A 762).

WISCONSIN STATUTES

The following Wisconsin Statutes which are relevant to issue four are reproduced in full in the Appendix at (A 878.5).

§ 448.02 (1)

§ 448.17

§ 448.18 (2)

§ 448.18 (7)

§ 15.405

§ 227.20

STATEMENT OF THE CASE

Petitioner was a twice elected County Court Judge who was and remained popular with the people (A 884, 898, 907). He was removed from office by the Florida Supreme Court (A 2) upon Findings of Fact, Conclusions of Law and Recommendation for Removal ("Findings") (A 19) made by a state constitutionally established investigatory and prosecutorial body, the Florida Judicial Qualifications Commission ("JQC") composed of 2 attorneys, 6 judges and 5 laypersons none of whom are selected by the Florida Supreme Court (A 868).

Petitioner, moved to Citrus County, Florida in 1983 (A 566). Perceiving serious problems with the legal system, he obtained the removal of Judge Leonard Damron for numerous acts involving improper politics and favoritism in the administration of the county court (A 567, 568). Damron, however, had been popular with local attorneys, politicians, and newspapers (A 568-569, 609-610).

Petitioner was elected in 1987. In 1991, the people of Citrus County overwhelmingly reelected him despite massive opposition from local attorneys, politicians, and newspapers (A 588).

Petitioner received a Notice of Investigation on April 28, 1992, inviting him to appear for a preliminary hearing on May 18,

to refute or explain 8 alleged acts of misconduct. A motion to continue the hearing was denied. At the hearing, the JQC reversed itself and granted a continuance, but only for the reason that it wanted time to file additional charges.

On June 29, Petitioner received an Amended Notice and a letter advising him that he would have only 3 hours to explain or refute 33 charges; thus allowing less than 6 minutes per charge.

On August 7, the JQC filed formal charges alleging 31 acts of misconduct, including allegations that Petitioner had stated in open Court, "You cannot separate morality from the law." On October 26, Petitioner was served with yet another 14 additional formal charges of misconduct, some dating back almost 5 years.

Prior to the close of pleadings, the JQC without consultation with Petitioner noticed the final hearing of 45 basically unrelated charges to begin January 26, 1993. Petitioner repeatedly sought but was denied continuances. (A 938, 962).

The Petitioner denied the charges and obtained several hundred witnesses to prove that he was consistently patient, courteous, and professional. On January 13, the JQC Special Counsel ("Prosecutor"), served a Motion in Limine asserting that unless the JQC limited the number of opinion witnesses to 3 and

character witnesses to 5, the proceedings would be unnecessarily delayed. Before Petitioner could respond, the motion was, without notice, granted.

On January 13, 1993, a Motion for Continuance asserting uncompleted discovery, transcriptions, and prosecutorial production (A 962) was summarily denied. Just prior to trial Petitioner received an order requiring him to detail every aspect of his case upon penalty of exclusion of unlisted witnesses or evidence.

To support selective enforcement, First Amendment, vagueness and due process affirmative defenses, Petitioner deposed numerous attorneys, judges, and politicians, and served them and others with trial subpoenas. The JQC obstructed the depositions by granting ex parte protective orders and refusing to compel the deponents to answer questions propounded to them (A 237-46, 836)

The trial began on January 26, 1993. At the close of the Prosecutor's case, 16 charges were dropped and a continuance was without explanation declared until February 23.

On February 10, Petitioner served a motion for continuance asserting that with adequate time he could establish proof of selective enforcement of the Code of Judicial Conduct (A 984). This motion was summarily denied. The prosecutor then filed a

Motion in Limine asserting the JQC had no jurisdiction to consider affirmative defenses based on the United States Constitution and requesting Petitioner be barred from presenting evidence in support thereof (A 917). The motion was granted.

The final phase of the hearing began on February 23. Over objection the JQC mandated and then forced the trial of these 19 separate factual allegations to conclusion in 4 days. (A 120, 716)

At trial approximately 470 of Petitioner's witnesses and 700 evidentiary items were excluded on the assertion that he was not permitted affirmative defenses based on the United States Constitution and that they were merely "cumulative" (A 924-927, 760)

During trial, Petitioner was hurried and pronounced in contempt for delay. The commissioners were impatient, inattentive, and distracted (see Issues 4 and 5, *infra*). Fifty-three days after the trial the JQC filed its "urgent" Findings (A 20, 26, 62). A motion filed by Petitioner requesting equal time was denied. He responded within 20 days as ordered.

Petitioner was removed by the Supreme Court of Florida on June 24, 1993, one justice dissenting on grounds relating to unequal imposition of sanctions. Contrary to usual procedure, the removal order was made effective immediately upon filing.

Petitioner first raised his due process federal questions at his preliminary hearing (A 349); thereafter he raised selective prosecution, free speech, and vagueness questions in his Second Amended Motion to Dismiss (A 331); supported by a memorandum of law (A 994). This motion was denied without a hearing. The federal questions raised by this motion were incorporated in the Petitioner's Show Cause Response (A 329).

Federal questions were raised in the Fourth Amended Motion to Dismiss (A 800) and its supporting memorandum (A 1063), which were ignored. The federal questions contained therein were incorporated in the Petitioner's Reply (A 336).

Federal questions were again raised in the Affirmative Defenses (A 1055) and were ruled unallowable (A 760).

The Petitioner raised numerous federal questions throughout the trial and the pre-trial conference (A 213-307, 308-323, 64-70). Petitioner's efforts to preserve the record were routinely obstructed by the Chair's refusal to allow proffers (A 125-172).

The Florida Supreme Court rejected Petitioner's due process arguments (A 9-10) and by ignoring his federal issues based on selective enforcement, free speech, and vagueness of the Code tacitly approved the JQC position that they were inapplicable.

ISSUE ONE

WHETHER THE RESPONDENTS VIOLATED THE DUE PROCESS AND EQUAL PROTECTION REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY SELECTIVELY ENFORCING THE CODE OF JUDICIAL CONDUCT AGAINST PETITIONER FOR IMPERMISSIBLE REASONS.

There were three state court trial judges presiding in Citrus County; Circuit Judges Thurman and Edwards and County Judge, Gary Graham, the Petitioner.

Judge Thurman routinely presided unshaven in a plaid shirt, no robe, and no tie. Without jurisdiction he released inmates from jail ex parte. In open court he referred to defendants as "sport" and on one occasion described a cocaine prosecution as a "chicken sh--" case. Judge Thurman was not disciplined for this conduct or expression. (A 592, 837-842).

In a mediation proceeding Judge Edwards told a litigant sued by a famous baseball star that "there'll always be people like you around, but lets face it there's only one Ted Williams." He sentenced the litigant's out of town attorney to six months in jail for objecting by motion to this statement. The sentence was reversed on appeal. He openly drove a pick-up truck bearing a license tag which stated "I'm a Coon A__" graphically depicting a

raccoon, tailed raised, exposing a brown anus and black sphincter. Judge Edwards was not disciplined for this conduct or expression. (A 836-842)

During the depositions of former Florida Chief Justice Ehrlich, former Circuit Judge Coe, and Chief Circuit Judge Swigert, hypotheticals tracking the described conduct of Edwards and Thurman were presented for their consideration. (A 838)

The hypotheticals used fictitious names. The conduct was deemed unethical and in one instance described as proof the judge was unfit and his actions near criminal. (A 839)[1]

Petitioner's asserted wrongful conduct included refusing a probationer child visitation because visitation allowed during his first period of probation directly contributed to a probation violation. He threatened a sheriff's deputy with contempt for repeated life threatening conduct which violated the sheriff's written rules, used the word "penis" in a case involving a defendant spray painting a penis on a school wall,[2] and criticizing local

---

[1]If the full record is brought forward for review it will reveal the misconduct of three additional judges which remains well known but undisciplined by the JQC.

[2]See Issue Three *infra* for further details.

attorneys and judges as well as the justice system. (A 4, 15)

For this conduct the JQC recommended the ultimate sanction of removal from elected public office. (A 60) The Florida Supreme Court approved this recommendation and removed the Petitioner with one justice dissenting to the removal as an unequal application of the law. (A 2)[3]

Petitioner was obstructed from discovering and proving the impermissible motive of silencing his criticism. The JQC quashed discovery subpoenas, refused to compel Judge Edwards to answer deposition questions and ruled that it would not consider the affirmative defense of selective prosecution for the exercise of protected expression. (A 237-246, 836, 759) The Florida Supreme Court approved the JQC view that the equal protection clause was inapplicable. (A 2) Despite the discovery obstructions, the record compels a strong inference of selective enforcement.

The Opinion of the Florida Supreme Court is in conflict with *Gentile v. State Bar of Nevada*, 501 U.S ____, 115 L.Ed.2d 888, 111 S.Ct. 2720 (1991), *Scott v. Flowers*, 910 F.2d 201 (5th Cir.

[3]In dissent Justice MacDonald pointed out several examples of similar or more egregious conduct sanctioned by reprimand instead of removal.

1990), and *Baumgartner v. United States*, 322 US 665 (1944), on important Fifth and Fourteenth Amendment issues.

By strong inference the strikingly similar case of *Scott, supra*, influenced the prosecutorial procedures employed by the JQC. Unless circumvented, it presented an obvious constitutional bar to Petitioner's removal. It is only when considered in that light that the unusual procedures employed have a rational explanation.

Scott, like Petitioner, was an elected state court judge on the lower level of the trial court structure. He, like Petitioner, had publicly criticized higher court judges and the local justice system; and was sanctioned. The sanction was overturned on First Amendment grounds by the Fifth Circuit.

In *Gentile, supra*, an attorney was disciplined for making certain statements to the press concerning defenses he intended to raise at the criminal trial of a defendant he was representing. The statements were intended to counter statements to the press by the prosecution and police extolling the strength of their case.

This Court reversed (in Part III) the sanction, Opinion by Kennedy, J., joined by Marshall, Blackmun, Stevens and O'Connor, J.J., holding that the rule under which the sanction was imposed

was void as applied for vagueness.

In the opinion in Part III, it was stated:

> The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement, Kolender v. Lawson, 461 US 352, 357-358, 361, 75 L Ed 2d 903, 103 S Ct 1855 (1983); Smith v. Goguen, 415 US 566, 572-573, 39 L Ed 2d 605, 94 S Ct. 1242 (1974), for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law. The question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility. The inquiry is of particular relevance when one of the classes most affected by the regulation is the criminal defense bar, which has the professional mission to challenge actions of the State. Petitioner, for instance, succeeded in preventing the conviction of his client, and the speech in issue involved criticism of the government. [Emphasis added.]

The Respondents in removing Petitioner departed from and approved a departure from the usual and customary course of judicial proceedings as announced in *Scott*, *Gentile*, and *Baumgartner*, *supra*. Review by this Court is appropriate.

ISSUE TWO

WHETHER THE RESPONDENTS VIOLATED THE FREEDOM OF SPEECH GUARANTEE OF THE FIRST AMENDMENT BY REMOVING THE PETITIONER FROM HIS OFFICE AS AN ELECTED JUDGE IN THE STATE OF FLORIDA FOR HAVING PUBLICLY CRITICIZED ATTORNEYS.

The exact reported words of the Petitioner made in response to questions posed to him by a newspaper reporter were that:

> . . . he believes it shows disrespect to the court if attorneys are not on time, bicker amongst themselves, act "goofy," and "don't talk like attorneys," or "dress like attorneys."
>
> "And I'm going to start taking actions against attorneys who do not act right," Graham said.
>
> He said he will caution them the first time they do it; then on second offenses take away their privilege to have him call their cases out of the docket's order for their convenience; then on third occurrence hold them in contempt of court, fining them, on the fourth time hand them community control; and the fifth time put them in jail.
>
> "Maybe when they're over there they can read some law books and learn how to act in court," he said. (A 936)

The Petitioner was then quoted as saying:

> "There are many fine attorneys in the Citrus County Bar Association who do a fine job, act right, and get good results for their clients." (A 936)

Based on these statements the JQC made the following well edited findings of fact which omitted the above stated words of praise and the context of a jail sentence for a <u>fifth</u> act of contempt:

(A.) "The Commission finds that on or about September 15, 1988, in an interview with a reporter from a local Citrus County newspaper, Respondent made a number of disparaging and insulting remarks about Citrus County attorneys, including statements that local attorneys were not on time, bickered among themselves, acted goofy, did not talk like attorneys, or dress like attorneys and that he should put them in jail where they can read law books and learn how to act in court. Respondent's statements were widely reported in the local print media and many attorneys were offended by the remarks. The local bar association issued a public statement critical of Respondent's remarks following an unsatisfactory meeting with Respondent which was mediated by the county's Administrative Judge. Respondent ultimately issued a statement in the nature of apology for his remarks. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary." (A 28) [Emphasis added.]

The Florida standard for removal of judges is willful or persistent failure to perform duties or other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office (A 872). This must be proven by clear and convincing evidence (A 7). The Florida Supreme Court has interpreted this to mean that if conduct does not in fact cause lack of public confidence in the judiciary a judge should nevertheless be removed if his conduct "should" erode public confidence (A 12). This interpretation alone injects an impermissible element of vagueness

as applied to the suppression of free speech.

However, the JQC further expands the vagueness of the Code by its findings that Petitioner's speech "could" reasonably "tend" to lessen public confidence. "Could" implies a possibility; "tend" implies a leaning toward a result. Thus the Petitioner was removed for speech which had a possibility of leaning toward lessening the public confidence in the judiciary; a far cry from conduct which "should" or indeed did have such effect.

The vote, as related to this finding, is a nullity because it is analogous to a criminal jury returning a verdict that "beyond a reasonable doubt" the evidence tends to show that the defendant might possibly have premeditatedly killed the victim. These modifying terms made meaningless the required clear and convincing standard of proof.

This Court has held that a finding of fact, to be acceptable, must be supported by evidence meeting the burden of proof and properly reflecting the charge. See *Baumgartner v. United States*, 322 US 665 (1944) dealing at length with findings of facts as related to the evidence and the charge.

"Public comments by judges about pending cases and social issues have caused a firestorm of debate within the Bar and

throughout society for at least two decades, . . ." Abbie G. Baynes, *Judicial Speech: A First Amendment Analysis*, 6 Georgetown Journal of Legal Ethics 81 at 81 (Summer 1992). The author cites as examples the controversies surrounding public statements made by the Chief Judge of the Fourth Judicial Circuit of Florida, three United States District Judges, and a United States Supreme Court Justice.

While the state has a duty to regulate the conduct of the judiciary, the state's efforts must be subjected to an increasingly strict level of scrutiny as they move closer to impairing our core First Amendment values. *Morial v. Judiciary Commission*, 565 F.2d 295, 300 (5th Cir. 1977). Where a regulation goes so far as to restrict speech because of its content, a court must strictly scrutinize such a regulation, requiring the state to bear the burden of showing that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. *Windmar v. Vincent*, 454 US 263, 270 (1981)

The Court has frequently reaffirmed that speech on public issues occupies the "highest rung of the hierarchy of First Amendment Values," and is entitled to special protection. *Connick v. Myers*, 461 US 138, 145, (1983). Public issue speech has been

described as a "core" First Amendment value. *Scott v. Flowers*, 910 F.2d 201, 212 (5th Cir. 1990)[4]

The Petitioner was removed from office for the content of speech regarding the public issue of attorney misconduct. The truth of his statements were never contested. (A 627-629)

The removal of an elected public official runs against our fundamental democratic ideals and has been described as ". . . a matter of gravest possible concern." *Judicial Inquiry and Review Board v. Snyder*, 523 A 2d 294, 300 (Pa. 1987) The removal of the Petitioner for the content of his truthful speech regarding a public issue has occurred during a "firestorm of debate within the Bar and throughout society" about the propriety of judicial speech. (*Baynes, supra*) The question involves core values of the First Amendment and the ideals of democracy and is a special and important issue of national importance which justifies resolution by this Honorable Court.

---

[4]The Opinion of The Supreme Court of Florida in this case which adopted and approved the JQC Findings is on its face in direct conflict with *Scott v. Flowers*, 910 F.2d 201 (5th Cir. 1990).

In *Scott* a justice of the peace was publicly reprimanded for criticizing other judges. As in this case, the truth of his statements were never at issue. *Id* at 204 Also consistent with this case his sanctions were bolstered by allegations of insensitivity to litigants. *Id* at 204. The District Court in *Scott* declared the sanctions imposed against Judge Scott to be a violation of the First Amendment.

ISSUE THREE

WHETHER THE FLORIDA CODE OF JUDICIAL CONDUCT AS APPLIED VIOLATES THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT DUE TO VAGUENESS OF CONSTRUCTION.

In 1992, Petitioner presided over a weekend first appearances in a courthouse empty except for the judge, bailiff, and criminal defendants. Observing a lone bailiff and numerous defendants, concerned for the safety of the bailiff and consistent with written security practices, he instructed the bailiff to have at least two officers present whenever there was more than one defendant. Upon a reoccurrence, Petitioner threatened the bailiff's supervisor with contempt if the situation continued. (A 1109, 1121)

In another case he sentenced a defendant to probation for battery of his estranged spouse and trespass to an occupied building. His children were named victims in the trespass charge. Authority exists to prohibit contact with victim family members. *Rodriguez v. State*, 378 So.2d 7, 10 (Fla. 2 DCA 1979); *Jano v. State*, 559 So. 2d 1270, 1272 (Fla. 4 DCA 1990). Accordingly the Petitioner prohibited contact with the wife but nevertheless allowed defendant visitation with his children. As a result of the child visitation defendant violated his probation.

Petitioner placed defendant back on probation with the further condition that he not have contact with his wife or children until he completed probation. Overlooking the fact that the children were named victims and visitation had caused the probation violation, the Appellate Division reversed Petitioner and ruled the condition was an unreasonable condition of probation. (A 1070, 1087)

In another case Petitioner sentenced a 19 year old with a history of burglary to 6 months in jail for painting a giant penis on school walls. His mother stated that everyone does this on graduation night. Petitioner asked the audience to stand if they had graduated from high school and to be seated if they had painted a giant penis on school walls on graduation night. When no one sat down he told the defendant's mother that she was the defendant's problem and that, even in today's society, painting giant penises on school walls was not an accepted rite of passage.[5] (A 1132)

For decisions such as these Petitioner was found guilty of violating the Code of Judicial Conduct ("Code") and the Florida Supreme Court removed him from his twice elected public office.

---

[5]The JQC characterized the Petitioner's use of the word "penis" as the use of " . . . vulgar, inappropriate and highly offensive language." (A 42-43) The Florida Supreme Court in its opinion stated that the Petitioner used ". . . vulgar and offensive language." (A 5-6) Neither the court nor the JQC offered suggestions as to what word should be used in a case such as this.

Petitioner was also removed for stating that some attorneys acted goofy and that on a fifth conviction for contempt he would consider putting them in jail. (See Issue 2, *supra*)

Petitioner raised the affirmative defense that the Code was unconstitutionally vague. (A 1055) The JQC drew issue with a denial. (A 757) Thereupon, the Petitioner deposed a county judge, a circuit judge and a former Florida Supreme Court justice. The deponents were tested to determine whether hypothetical circumstances were proscribed by the Code. Accuracy was measured against written opinions issued by the Committee on Standards of Conduct Governing Judges, a state created committee of experts ("Conduct Committee"). The judges repeatedly gave answers inconsistent with the Conduct Committee. (A 361-72, 375-80, 383-85, 389-90, 393-94, 400-403, 410-13)

They were also presented hypotheticals identical to the Petitioner's alleged conduct. Frequently the judges didn't know if the conduct was prohibited or believed it was permitted by the Code. (A 373-75, 387-89, 391-92, 398-400, 404-05, 414-17)

One judge testified that the Conduct Committee could not provide definite answers to what the Code meant and that he would err on the side of caution and not engage in certain conduct even

if it involved the right to free speech. (A 368-71)

Ben Overton, now a Florida Supreme Court Justice, once analyzed what should not be grounds for judicial discipline:

> . . . In the absence of fraud or a corrupt motive, a commission must avoid taking action against a judge for reaching an erroneous legal conclusion or misapplying the law. * * * It was to this point that Chief Justice Burger spoke in *Chandler v. Judicial Council* when he stated: "There can, of course, be no disagreement among us as to the imperative need for total and absolute independence of the judges in deciding cases or in any phase of the decisional function." To allow disciplinary proceedings to evaluate judicial decisions could force judges to walk in ill-defined and standardless line between propriety and impropriety. Clearly, such a sword over a judge's head would have a tendency to chill his independence. A judge would have to be as concerned with what is proper in the eyes of the disciplinary commission as with what is the just decision. [Ben F. Overton, "Grounds for Judicial Discipline," 54 *Chicago-Kent Law Review* 59, 65 (1977).]

There is nothing in the record indicating Petitioner was guilty of fraud or corrupt motives in the judgments leading to his ouster. In its opinion removing him the Florida Supreme Court stated that:

> His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matters before him. His motives are acceptable, but his methods are not. * * * We recognize that Graham is not dishonest, venal, or guilty of moral turpitude. (A 8)
>
> * * *
>
> No one claims, or even suggests, that Judge Graham is dishonest. The record supports the claim that he in fact is genuinely honest. (A 16)[Emphasis added.]

Where a Code is applied so that a twice elected judge is removed from office for truthful, if disturbing, public statements and honest, if mistaken, courtroom judgments, a massive invasion of the independence and integrity of the judiciary results.

At least 37 states have a combination of an almost identical code and related enforcement procedure. (A 776) In states throughout the nation disciplinary commissions have interpreted the Code or similar codes in equally overreaching and disturbing ways, including a charge rejected by the Montana Supreme Court against a state supreme court justice for having stated in dissent that the majority opinion was "intellectually dishonest" *State v. Judicial Standards Comm.*, 643 P.2d 210 (Mont. 1982). Other examples will be given if this petition is granted.

The Code as applied chills the exercise of public speech and official judgment and diminishes the judiciary. Unless this Court places a narrowing interpretation on the Code, judges throughout the nation will continue to be held up to public censure for the exercise of their judgment and their First Amendment right to speak. Accordingly, this question presents a special and important issue of national importance which justifies a resolution by this Court.

ISSUE FOUR

WHETHER THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION VIOLATED THE DUE PROCESS REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY ACTING AS THE INVESTIGATOR, PROSECUTOR, JUDGE AND JURY.

Where the investigative and adjudicative functions of an administrative hearing panel are combined, it is not an unconstitutional violation of procedural due process unless under a **realistic appraisal**, bestowing investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden. *Withrow v. Larkin*, 421 US 35, 47 (1975).

Larkin complained it was fundamentally unfair for his prosecutors to also try him. This Court said the combination of investigative and adjudicative functions **without more** does not constitute a due process violation (*Id.* at 58), but said: "Of course, we should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice" (*Id.* at 54).

Theoretically, there are major legal, political, and practical distinctions between the *Withrow* medical board and the JQC. (The full Wisconsin procedure is set forth in detail at A 878.5.)

Before Dr. Larkin's license could be removed, he had the

right to a jury trial. No such right is afforded judges in their removal proceedings. The removal of doctors from their profession does not involve highly charged political forces. Members of the Wisconsin medical board are not elected officials needing the support of newspapers and attorneys to retain their elected offices. Of the 13 members on the JQC, 6 are elected officials subject to newspaper pressure. The 4 trial judges may only be challenged for office by attorneys and the 2 appellate judges rely on contributions and endorsements from attorneys to aid in their retention elections.

Petitioner, among other things, was charged with criticizing attorneys, judges, politicians, and favoritism to influential people by his predecessor. The propriety of his criticism was then judged by a group of attorneys, judges, politicians, and influential appointees after newspaper editorials criticizing him for his tough sentences and calling for his removal were sent to them. (A 657) Under a "realistic appraisal" this is fundamentally unfair.

Actual indicia of unfairness includes the Chair repeatedly emphasizing the need to accelerate the hearing, insisting on the trial of 45 separate factual allegations in just 8 days (A 117, 120, 716). He became increasingly agitated about the pace of the proceedings (A 102, 112) timing Petitioner and announcing the minutes elapsing

between questions and threatening to excuse the witnesses if questions were not immediately propounded (A 116, 119, 260)[6] Two commissioners and the Prosecutor joined in the agitation over the pace of the proceedings (A 106, 123, 121, 109).

Petitioner was forced to trial 9½ to 10 hours a day; on one day allowed only a 20-minute lunch break. The Chair ignored his objections based on exhaustion, excusing his witnesses when he could no longer continue. (A 107-108, 110)[7]

Commissioners, as the jury, became restless and inattentive. They laughed, talked, audibly yawned, and slept through the trial. One caught reading a pocket calendar refused to stop when challenged, responding instead by glaring at Petitioner during the remainder of his presentation. Two Commissioners read newspapers during the trial. (See Issue Five, *infra* at page 28). One commissioner exclaimed "Jesus Christ" with respect to Petitioner's efforts during the trial.[8] A photograph of one reading his newspa-

---

[6]For a full picture of the obsession with accelerating the trial, the Court's attention is directed to Document 5 (A 97, *et seq.*).

[7]For a full picture of the effects of the gruelling trial schedule, the Court's attention is directed to Document 7 (A 173, *et seq.*).

[8]For these and other examples of the JQC's conduct during the trial, the Court's attention is directed to Document 4 (A 71, *et seq.*).

per was published in the local newspaper. Petitioner filed affidavits from citizens viewing the trial which verified this conduct (A 180).

Less egregious conduct of the judge, jury, and prosecutor was enough in a federal drug case to justify reversal on due process grounds even where the defendant was given the benefit of a procedure where he did not face a unified judge, jury, investigator, and prosecutor. *U.S. v. McClain*, 823 F.2d 1457 (11th Cir. 1987).

Additionally, the Chair, an attorney at law, twice charged Petitioner with contempt in the presence of the juror commissioners (5 of which are lay persons) threatening him with incarceration; once for trying to clarify how Petitioner's assistant might be allowed to photograph sleeping commissioners and once for taking too long to make a note concerning the Chair's refusal to allow a proffer of a federal due process objection. (A 255-59, 260-62).

No less than 65 times Petitioner was not allowed to proffer legal objections or argument. Typically, the Chair would refuse to allow a proffer stating that it could be made at a later time. However, if Petitioner took a few minutes to note the objection so it could be proffered at a later time, he was then charged with contempt and threatened with jail (A 260-261). Subsequently, the chair flatly refused Petitioner permission to make such notes (A

152)[9] At one point Petitioner was instructed to make his proffers to an empty courtroom. (A 730-738).

When Petitioner inadvertently left a critical name off the witness list, he was banned from calling the witness without the preliminary hearing required by Florida law.[10] When the Prosecutor made the same mistake, his witness was allowed. (A 1128)

At one point in the proceedings, General Counsel physically shoved Petitioner in full view of the Commissioners and public (A 708-709). Both trial and pre-trial motions were heard *ex parte* without notice and without hearing. (A 733) One motion was heard before Petitioner even received a copy (A 237-246).

Finally, the JQC refused to allow Petitioner to prove or argue affirmative defenses that the JQC, its proceedings, and the Code violated the United States Constitution with respect to selective prosecution, free speech, vagueness of the Code, or due process of the law. (A 740-743, 916.5, 760).

---

[9]For a full picture of the extent to which Petitioner was denied his right to proffer, the Court's attention is directed to Document 6 (A 125, *et seq.*).

[10]The state of Florida requires a "*Richardson*" hearing under these circumstances. The Florida courts have held that it is per se reversible error not to hold such a hearing even when it is not requested. *Richardson v. State*, 246 So.2d 771 (Fla. 1971); *Fedd v. State*, 461 So.2d 1384 (Fla. 1st DCA 1984); *Hall v. State*, 477 So.2d 572 (Fla. 4th DCA 1985).

There is obviously much more going on in a judicial discipline case than in Dr. Larkins' case. There is not only the possibility that bias may exist, it is obvious. Accordingly, judges throughout the nation have raised, albeit unsuccessfully, the *Withrow* objection in their respective state supreme courts.[11]

Because they are the investigator and prosecutor, these commissions can selectively target a judge for impermissible reasons. Because they are the judge, they can select the evidence which will be admitted and excluded. Finally, because they are the jury, they select the result that supports their prosecution by the simple and not surprising conclusion that their witnesses are credible, but the judge's are not.

This type of proceeding affects judges and communities throughout the nation. It is accordingly a matter of great national importance which deserves a full review by this Honorable Court.

---

[11] *In Re Elliston*, 789 S.W.2d 469 (Mo. 1990); *In the Matter of Del Rio*, 256 N.W.2d 727 (Mich. 1977); *In Re Rome*, 542 P.2d 676 (Kan. 1975); *In Re Hanson*, 532 P.2d 303 (Alaska 1975); *In Re Diener and Broccolino*, 304 A.2d 587 (Md. 1973), *cert. den.*, 415 U.S. 989; *In Re Kelly*, 238 So.2d 565 (Fla. 1970), *cert. den.*, 401 U.S. 962; *In the Matter of Mikesell*, 243 N.W.2d 86 (Mich. 1976); *In Re Haggerty*, 241 So.2d 469 (La. 1970).

ISSUE FIVE

WHETHER THE CONDUCT OF THE PROCEEDINGS IN THEIR TOTALITY RESULTED IN A FUNDAMENTALLY UNFAIR PROCEDURE THEREBY VIOLATING THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT.

Justice must satisfy the appearance of justice. *Offutt v. United States*, 348 US 11, 14 (1954).

In a democratic society the people's elected officials should not be disturbed in their tenure except in instances of great aggravation. *In Re Kelley*, 238 So.2d 565, 579 (Fla. 1970) (Justice Ervin in dissent.)

The commissioners acting as the jury appeared to be disinterested in the fact finding process. In full public view they laughed, talked, audibly yawned, and slept through the proceedings. One commissioner caught reading a pocket calendar refused to stop even when challenged, responding instead by laughing and glaring at the Petitioner during the remainder of his presentation. (See Issue Four, *supra*)

Two commissioners read newspapers during the proceedings. A photograph of one of the commissioners reading his newspaper was published locally. One commissioner exclaimed "Jesus Christ"

with respect to the Petitioner's efforts during the proceedings. (See Issue Four, *supra*)[35]

The following photographs reflect the publicly televised appearance of the JQC during the hearing which ultimately resulted in the extreme sanction of the removal of an elected public official.

Approximately 30,000 to 40,000 citizens of Citrus County viewed these proceedings on local cable television (A 620).[36]

Videocapture of Exhibit 175
Titled "JQC, Sleeping, etc."
Petitioner's Reply to Commission's Reply

[35]For a complete understanding of the commission's conduct during the proceedings, the Court's attention is directed to Document 4 of the Appendix (A 71 *et seq.*).

[36]See letters from the public demonstrating the public reaction (A 884).

Exhibit 187
Petitioner's Reply to Commission's Reply

Videocapture of Exhibit 175
Titled "JQC, Sleeping, etc."
Petitioner's Reply to Commission's Reply

In addition to this conduct, the JQC thwarted the Petitioner's discovery, suppressed his evidence, persistently ruled on motions ex parte without notice or hearing, refused to follow fundamental rules of evidence and procedure, and refused to allow him to prove or argue that he had been selectively prosecuted by a biased commission as measured against a vague code for the impermissible reason that Petitioner had upset the local legal community and newspapers by being a highly independent reform-minded judge (See Issues One through Four, *supra*).

These proceedings directed to the grave concern of removing a twice-elected public official did not satisfy justice because they failed to satisfy the appearance of justice. If the decision of a commission which openly talked, laughed, slept, and read calendars during such unfair televised proceedings is allowed to stand, it will deal a crushing blow to the appearance of the integrity of the judicial system which far exceeds any harm the Petitioner is alleged to have caused.

It is accordingly a matter of great national importance which deserves a full review by this Honorable Court.

Respectfully,
Michael L. Kinney
Counsel for Petitioner

93-713

CASE NO. _____

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME ONE

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

INDEX TO APPENDIX

Document	Description	Page
	VOLUME ONE	
1	Opinion of the Florida Supreme Court In Re: Judge Graham	2
2	Findings of Fact, Conclusions of Law and Recommendation for Removal	19
3	Judge Graham's Proffer to an Empty Courtroom	63
4	Excerpts from the Record Demonstrating the Conduct of the JQC During the Proceedings	71
5	Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings	97
6	Excerpts from the Record Where Proffers were Denied	125
7	Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner	173
8	Affidavits Related to JQC Misconduct	180
9	Excerpts from the Record Supporting Reasons for Selective Prosecution	191

VOLUME TWO

10	Federal Questions Preserved	213
11	Excerpts from Deposition of County Court Judge Woodrow Beauchamp	359
12	Excerpts from Deposition of former Circuit Court Judge Harry Lee Coe	381

VOLUME THREE

13	Excerpts from Deposition of former Chief of Justice of the Florida Supreme Court Raymond Ehrlich	408
14	Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992 (Exhibit 126 of Show Cause Response)	423
15	Excerpts from the Report of the Bench/Bar Commission, January 1993.	427
16	Opening Statement of Judge Graham	436
17	Closing argument for Judge Graham	445
18	Excerpt from Show Cause Response	557

VOLUME FOUR

18	Excerpt from Show Cause Response (Continued from Volume Three)	601
19	Excerpts from Judge Graham's Reply to Reply	655
20	Letter from Brad King to Florida Judicial Qualifications Commission with attached newspaper editorials	657
21	Notice of Formal Charges	666
22	Amendment to Notice of Formal Charges	688
23	Excerpts from transcripts of the proceedings	698
24	Excerpts from transcripts of the pre-trial conference	722
25	Excerpts from Transcripts of Proceedings Before JQC July 31, 1992 (Second Rule 6b hearing)	746
26	Answer to Affirmative Defenses and Motion to Strike Demand for Jury Trial	756
27	Order Granting in Part Motion of Limine and Limitation of Witnesses	759
28	Florida Judicial Qualifications Commission Rules	762

29	Listings of Judicial Disciplinary Codes and Procedures by State	776

VOLUME FIVE

30	Fourth Amended Motion to Dismiss	800
31	Florida Constitutional Provisions	867.5
32	Applicable Excerpts of the Florida Code of Judicial Conduct	874.5
33	Wisconsin Statutes	878.5
34	Public Response to JQC Proceedings Excerpts from Exhibit to Show Cause Response #174	884
35	Public Response to Formal Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108B	898
36	Public Response to Adverse Publicity Prior to Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108A	907
37	Motion in Limine dated February 18, 1993	916.5
38	News Article, Citrus County Chronicle, Sept. 15, 1988 (Judge says some attorneys act goofy)	934.5

39	Motion for Continuance dated December 18, 1992	937.5
40	Motion for Continuance dated January 13, 1993	961.5
41	Resume of Judge Graham	971.5
42	Excerpts from Transcript of Proceedings before the JQC May 18, 1992 (First Rule 6b hearing)	975.5
43	Motion for Continuance dated February 10, 1993	983.5

VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

NOTE:

Throughout the Appendix the pages of the underlying document are indicated as follows:

- PAGE X -

DOCUMENT 1

Opinion of the Florida Supreme Court
In Re Judge Graham

SUPREME COURT OF FLORIDA

No. 80,273

INQUIRY CONCERNING A JUDGE, NO. 91,415

RE: GARY G. GRAHAM

{June 24, 1993}

CORRECTED COPY

PER CURIAM.

We have for review the Judicial Qualifications Commission's (JQC) finding that Judge Gary Graham demonstrates a present unfitness to hold office and its recommendation that he be removed from office. We have jurisdiction pursuant to article V, section 12 of the Florida Constitution. We approve the JQC's findings and recommendations and remove Graham from the office of county judge.

Graham was elected as the county court judge for Citrus County in 1986 and has served in that position since taking office in 1987. On August 7, 1992, the JQC formally charged Graham

with the following violations of canons 1, 2, and 3 (A) (1) of the Code of Judicial Conduct:

- PAGE 2 -

1. Repeatedly using his position as judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, elected officials and their assistants, and others, without reasonable factual basis or due regard for their personal and professional reputations.

2. Exceeding and abusing the power of his office by imposing improper sentences and improper use of contempt power.

3. Acting in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court.

4. Acting in a manner which impugned the public perception of the integrity and impartiality of the judiciary.

5. Closing and attempting to close public proceedings.

The JQC made numerous factual findings to support its conclusion that Graham's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office. Although the JQC's report fully explains the nature of each particular incident involving Graham's misconduct, we mention

only a few of the factual findings that typify his behavior and tend to erode the public's confidence in the judiciary.

Graham presided in a case in which the defendant was charged with being a passenger in a vehicle in possession of an open container of alcohol. Graham suspended his driver's license for six months. When the defendant questioned the fairness of the sentence, Graham increased the suspension to nine months and then asked if the defendant wanted the court to reconsider the sentence. When the defendant responded "yes sir," Graham

increased the suspension to one year. We agree with the JQC that Graham's arbitrary increase in sentencing in this instance constituted an improper abuse of power.

Graham also served as the presiding judge in a case in which he sentenced the defendant to six months in jail for spray painting vulgar graffiti on public property. In open court, the mother of the defendant questioned the fairness of the sentence. Graham addressed the mother, stating, "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." Graham then engaged courtroom personnel

and spectators in a highly inappropriate colloquy that would be embarrassing to any reasonable person, particularly the defendant's mother. He needlessly utilized vulgar and offensive language and, in doing so, demonstrated a severe lack of judicial temperament.

In another case in which Graham presided, the defendant was convicted of driving under the influence of alcohol. When Graham sentenced the defendant, he also took that opportunity to accuse the sheriff's office of improperly releasing the defendant on his own recognizance as an act of favoritism. Graham stated that a ten-day sentence would have been appropriate but for the defendant's "improper" release on his own recognizance. As punishment for the "improper release," Graham then sentenced the defendant to ninety days in the county jail. He refused to mitigate the defendant's sentence and told the defendant "That's what you get for trading favors to get out of the Citrus County

jail." Although the defendant's sentence was within the legal range, Graham's comments clearly indicated that the length of the sentence was not based on the severity of the offense or on the defendant's criminal record, but on Graham's own allegations of

political favoritism in the sheriff's office. His actions constituted an abuse of power and impugned the public's perception of the integrity and impartiality of the judiciary.

To impose any degree of discipline upon a judge, the evidence regarding the charges against him or her must be clear and convincing. In re LaMotte, 341 So. 2d 513 (Fla. 1977). Although the findings of the JQC are of "persuasive force," In re Kelly, 238 So. 2d 565, 571 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971), this Court is charged with rendering the ultimate decision on whether the evidence proves that Graham's conduct is unbecoming a member of the judiciary. The object of these disciplinary proceedings "is not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." Id. at 569. Regrettably, in his appearance before the JQC, in his brief, and in his oral argument to this Court, Graham only obliquely addressed the critical issue of his present fitness to serve as a judge. Instead, he focuses his arguments on the conduct of other officials, attorneys, and citizens of Citrus County. Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant

to our determination of his ability to administer justice fairly and professionally.

- PAGE 5 -

As a county judge, Graham made what he perceived to be a valiant effort at ridding Citrus County of the political favoritism and government corruption that caused the demise of his predecessor. His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matters before him. His motives are acceptable, but his methods are not. Unfortunately, Graham fails to recognize that the alleged misconduct of others does not justify his repeated departure from the guidelines established in the Code of Judicial Conduct. "A judge's power to make orders exists solely by virtue of his or her function as an adjudicator; it does not extend beyond the performance of judicial duties." In re Eastmoore, 504 So. 2d 756, 757 (Fla. 1987). To go beyond those duties, as Graham has done, amounts to an abuse of power that threatens the integrity of the judicial branch.

We recognize that Graham is not dishonest, venal, or guilty of moral turpitude. According to the constitution, though, "[m]alfides, scienter or moral turpitude on the part of justice or

judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office." Art. V, § 12(f), Fla. Const. Judges are not obligated to adhere to a uniform mode of behavior and they are free to make decisions without fearing an investigation by the JQC. In re a Judge, 357 So. 2d 172 (Fla. 1978). "Every judicial officer is granted broad discretionary officer is granted broad discretionary powers, and one of the great strengths of our system is the carefully guarded right to

exercise independently those powers." Id at 178. But when diverting from common professional standards and judicial courtesies, a judge's conduct should be rationally based. The direct evidence in this case reveals that Graham's conduct was, at times, neither professional nor rational, and there was a clear abuse of judicial power to the detriment of individuals.

Graham argues that his right to due process was violated because he was given insufficient time to prepare his defense and because the JQC sat as both the prosecutor and the judge.[1] Procedural due process requires that a "judge be given an oppor-

tunity to be heard, and that the proceedings against a judge be essentially fair." In re Shenberg, 17 Fla. L. Weekly 5217, 5216 (Fla. April 2, 1992). Graham received notice of the investigation and was formally charged on August 7, 1992. The JQC hearing was held in January 1993, giving Graham approximately five and one-half months to prepare for the charges.

We reject Graham's contention that his right to due process was violated by the JQC's dual performance as fact-finder and judge. As the reviewing court, we are obligated to study the record and independently assess the factual findings and recommendation of the JQC. We conclude that the fact finding

---

[1]We find it ironic that Graham now complains about the disciplinary process and the role of the JQC. Graham instigated the JQC to initiate disciplinary proceedings against Judge Leonard Damron. See In re Damron, 487 So. 2d 1 (Fla. 1986)

process was conducted according to the procedural rules of the JQC; that the JQC granted Graham an opportunity to be heard; and that the proceedings were essentially fair and afforded Graham his right to due process.[2]

Having approved the JQC's findings of fact, this Court is faced with the choice of publicly reprimanding Graham or remov-

ing him from the office of county judge. Art. V, § 12, Fla. Const. This Court will not lightly remove someone from judicial office. In re Berkowitz, 522 So. 2d 843 (Fla. 1988). A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others. We are troubled by the fact that Graham shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct. See In re Trettis, 577 So. 2d 1312 (Fla. 1991) (when a judge continuously acts in a manner that undermines public confidence, removal may be required).

Graham has provided a number of letters from citizens who support his efforts as a county judge and we realize that he has been popularly elected and reelected to his position. However,

---

[2]Our review of the transcripts and video tapes of the JQC hearing revealed that Graham repeatedly objected to motions, intentionally delayed the proceedings, and disregarded the instructions of the presiding chair. Although his performance during the JQC proceedings does not condemn him, it does reflect negatively upon his character. We are convinced that Graham would not have tolerated such behavior in his own courtroom.

"if a judge commits a grievous wrong which should erode confidence in the judiciary, but it does not appear that the public has lost confidence in the judiciary, the judge should nevertheless be removed." LaMotte, 341 So. 2d at 518. Because judges are held to a very high standard of conduct, In re Boyd, 308 So. 2d 13 (Fla. 1973), they are frequently required to make some sacrifices that other individuals are not called to make. By accepting the privilege of serving as a judge and by taking the oath of office, Graham agreed to live and operate his courtroom by that high standard.

Standing alone, each individual charge against Graham might not warrant the extreme disciplinary measure of removal.

> Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

Kelly, 238 So. 2d at 566. Although some of the charges are more severe than others, Graham's cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action. "Pec(c)adillos of a judge should be ignored by the Commission unless they cumulatively reflect upon

the present quality of his judicial service or render him an object of disrespect and derision in his role to the point of ineffectiveness." State ex rel. Turner v. Earle, 295 So. 2d 609, 621 (Fla. 1974) (Ervin, J., dissenting). A judgeship is a

position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice. In removing Graham from office, we rely on In re Crowell, 379 So. 2d 107 (Fla. 1980). In Crowell, this Court removed the judge for abuse of contempt power and a pattern of hostile conduct that demonstrated a serious lack of judicial temperament.[3] Graham's conduct was similar in degree to Judge Crowell's and warrants the same discipline.

We approve the findings and recommendation of the JQC. Gary Graham is hereby removed from office without compensation effective upon the filing of this opinion, at which time a vacancy will exist in the Citrus County court.

It is so ordered.

BARKETT, c.J., and OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.
McDonald, J., concurs in part and dissents in part with an opinion.

[3]In In Re Crowell, 379 So. 2d 107 (Fla. 1980), the judge who was the subject of the disciplinary proceedings partially attributed his misconduct to medical problems. Graham offers no similar justification or mitigating reasons that might explain his actions. Graham's case is distinguishable from In re Lantz, 402 So. 2d 1144 (Fla. 1981), in which Judge Lantz was publicly reprimanded. Although Judge Lantz was charged with repeated acts of arrogance and displaying a lack of courtesy and dignity to litigants and lawyers, he confessed his misdeeds, apologized, and was rehabilitated.

MC DONALD, J., concurring in part, dissenting in part.

I agree that there is competent evidence to support the findings of fact of the commission. I further agree that Judge Graham's actions as found support the conclusion that on occasions he failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by canon 1, Code of Judicial Conduct. He was not always courteous to people with whom he dealt in his official capacity as required by canon 3.

In assessing his fitness to hold office we should address the totality of his performance. None of his transgressions, standing alone, appear sufficient to make a determination that he is unfit. Collectively, he becomes suspect. Our evaluation, however, should not be limited to his ethical violations. Also thrown in the ratio

must be the hours and the days where he properly functioned. We must also consider his intellect, his honesty, and other personal traits. Numerous tapes, both audio and video, indicate that for the most part and on most occasions he performed adequately as a judge.

One of Judge Graham's shortcomings is his view that his conduct was justifiable and for good cause without consideration of its effect on others. He explains his actions as that of one trying to clean up a decadent county court system. He fails to recognize that even though one's goal may be appropriate, the means employed to accomplish it must be within the canons of judicial ethics. I believe that some of his actions can be explained by judicial immaturity.

His conduct throughout the proceedings before the Judicial Qualifications Commission was deplorable. He feels that the entire proceedings against him were an extension of his political enemies and that the members of the commission became unworthy participants therein. He presented large amounts of irrelevant evidence, constantly challenged the chairman of the commission,

made numerous unnecessary objections. It is unfortunate that he did not employ a skilled lawyer to advise and conduct the hearings for him, because the manner in which he participated in the proceedings could not have created a friendly feeling from members of the commission. See In re a Judge, 357 So.2d 172 (Fla.1978)

We do not lightly remove a judge from office. Most removals have been the result of some act of dishonesty by the judge. No one claims, or even suggests, that Judge Graham is dishonest. The record supports his claim that he in fact is genuinely honest.

We reprimanded Judge Dick Lantz in In re Lantz, 402 So. 2d 1144 (Fla. 1981), for conduct that appeared to me more egregious than that of Judge Graham. Judge Lantz acknowledged his transgressions while Judge Graham has not. We reprimanded Judge Richard Kelly for conduct which was quite similar to that of Judge Graham. In re Kelly, 238 So. 2d 565 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971). We removed Judge Joseph M. Crowell for gross abuse of a judge's contempt power. In re Crowell, 379 So. 2d 107 (Fla. 1979).

Judge Crowell was also suffering from medical problems. Neither of these factors exist in Judge Graham's case.

I do not wish to minimize Judge Graham's transgressions, but I do not believe we can find that he is unfit to serve. Now that this Court has advised him of his errors, and with an appropriate reprimand delivered in open court by the Chief Justice, I believe he should be allowed to continue to serve for such time as he has been elected.

I would remind Judge Graham that judges are servants of the people in an unique way. We have huge power over the property and lives of many people. This power must be responsibly and reflectively utilized. All persons must be treated equally and impartially. A judge must not react in anger to any situation. At all times we must serve the public interest by promoting justice and avoid any impropriety or appearance thereof. Courtesy to all is an essential trait of a respected judge. We must not be swayed by partisan demands, public clamor, or considerations of personal popularity, nor apprehension of unjust criticism. A judge should be careful to assure that in every particular the judge's conduct

should be above reproach. He should not use his office for political power or retribution against his detractors.

I believe these proceedings were necessary. I also believe that they are bound to have a therapeutic affect on the future conduct of Judge Graham and, hopefully, help steer other judges from like conduct.

- PAGE 13 -

Thus I would approve the factual findings of the commission and loudly and severely reprimand Judge Graham. I would not remove him from office.

- PAGE 14 -

Original Proceeding - Judicial Qualifications Commission

Joseph J. Reiter, Chairman, Ford Thompson, General Counsel and Roy T. Rhodes, Special General Counsel, Florida Judicial Qualifications Commission, Tallahassee, Florida; and Terrance A. Bostic, and Alicia J. Schumacher of Bush, Ross Gardner, Warren & Rudy, P.A., Special Counsel to the Florida Judicial Qualifications Commission, Tampa, Florida.

for Petitioner

Gary G. Graham, *pro se*, Inverness, Florida,

for Respondent

DOCUMENT 2

Findings of Fact, Conclusions of Law and Recommendations for Removal

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

CASE NO. 80,273

INQUIRY CONCERNING

A JUDGE, NO. 91-415

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION FOR REMOVAL

The Florida Judicial Qualifications Commission ("the Commission"), pursuant to Article V, Section 12 of the Florida Constitution, Rule 21 of the Florida Judicial Qualifications Commission Rules and Rule 2.140 of the Rules of Judicial Administration, hereby files its Findings of Fact, Conclusions of Law and Recommendation for Removal with the Supreme Court of Florida regarding Judge Gary G. Graham, County Court Judge for Citrus County, Florida.

I. BACKGROUND

Respondent is the County Court Judge for Citrus County, Florida. He was first elected in 1986 and has continuously served since taking office in 1987.

On August 7, 1992, the Commission filed a Notice of Formal Charges against Respondent in accordance with Rule 7 of the Florida Judicial Qualifications Commission Rules. The Notice charged Respondent with six violations of the Code of Judicial Conduct and contained thirty-one separate factual allegations supporting the

violations. On October 24, 1992, the Commission filed an Amendment to the Notice of Formal Charges against Respondent which contained fourteen additional factual allegations in support of several of the six violations contained in the Notice of Formal charges.

The Notice and its Amendment charged Respondent with the following six violations of the Code of Judicial Conduct:

1. Repeatedly using his position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others, without reasonable factual basis or due regard for their personal and professional reputations, in violation of Canons 1, 2 and 3A.1 of the Code of Judicial conduct;

2. Exceeding and abusing the power of his office by imposing improper sentences and improper use of contempt power, in violation of Canons 1, 2 and 3A.1 of the Code of Judicial Conduct;

3. Acting in an undignified and discourteous manner toward litigants, attorneys and others appearing in his court, in violation of Canons 1, 2 and 3A.3 of the Code of Judicial Conduct;

4. Acting in a manner which impugned the public perception of the integrity and impartiality of the judiciary, in violation of Canons 1, 2 and 3A.3 of the Code of Judicial Conduct;

5. Closing and attempting to close public proceedings, in violation of Canons 1 and 2 of the Code of Judicial Conduct; and,

6. Engaging in *ex parte* communications, in violation of Canons 1, 2 and 3A.4 of the Code of Judicial conduct.

The Commission denied Respondent's motions to dismiss and he

filed an Objection, Partial Answer and Demand for Jury Trial directed to the Notice of Formal Charges. Respondent did not address the specific allegations against him in his responsive pleading; he simply denied each of the allegations. Respondent raised a variety of affirmative defenses to the charges. He argued that the Commission had not followed its own rules, was biased and prejudiced against him and was an unconstitutional institution which violated his rights to procedural due process. He also argued that the charges were trivial, the Code of Judicial Conduct was unconstitutionally vague and therefore unenforceable and that his criticisms and allegations of misconduct against others were

protected as free speech by the United States and Florida Constitutions.[1]

On October 21, 1992, the Commission noticed the hearing for January 26, 1993.[2]

The notice of Formal Charges and the Amendment

---

[1]Respondent subsequently filed a virtually identical pleading directed to both the Notice and its Amendment. This subsequent pleading also contained a counterclaim against the Commissioners related to an alleged conspiracy by the Commissioners and others to violate certain statutory and constitutional rights of the Respondent. The Commission struck the counterclaim upon motion of Special Counsel.

[2]Respondent was admittedly notified of the investigation against him on April 28, 1992, and was advised of the majority of the specific allegations against him on June 28, 1992. (*See*, Amended Motion to Dismiss, p. 41-42.) Nonetheless, Respondent continuously sought to postpone the hearing, arguing that he could not be prepared, and delayed commencement of discovery until approximately one month before the hearing. Respondent filed numerous motions to continue the hearing based, in great part, on the same grounds raised in his pleadings and motions to dismiss. Respondent also filed a Petition for Constitutional Writs with this Court,seeking, *inter alia*, to vacate the notice of hearing. On January 25, 1993, the day before the hearing commenced, Respondent instituted an civil action against the Commissioners and the

to the Notice of Formal Charges were consolidated and the hearing commenced as noticed on January 26, 1993. Respondent was present and represented himself, with occasional assistance from attorney Joseph F. McDermott. The case against Respondent was presented by Special Counsel Terrance A. Bostic. The thirteen

members of the Commission were present as follows: Joseph J. Reiter, Esquire, Chairman; Circuit Court Judge Frank N. Kaney, Vice Chairman; District Court of Appeals Judge J. Klein Wigginton; District Court of Appeals Judge Natalie Baskin (sitting as an *ad hoc* replacement for recused Commissioner Judge Richard H. Frank); Circuit Court Judge Miette K. Burnstein; County Court Judge Marvin H. Gillman; County Court Judge David A. Demers (sitting as an *ad hoc* replacement for recused Commissioner Judge Thomas B. Freeman); Mrs. Sybil H. Barnes (sitting as an *ad hoc* replacement for recused Commissioner Garth C. Reeves); Mr. William C. Clark (sitting as an *ad hoc* replacement for recused Commissioner Seth Dennis); Mr. John D. Griner (appointed to temporarily fill the vacancy created by the expiration of the term of Commissioner Sybil H. Barnes Mr. Rutledge R. Liles, Esquire; Mrs. Nancy Mahon; and, Mr. Stanley G. Tate. All thirteen members of the Commission were present throughout the hearing and deliberations.

Special Counsel presented the evidence against Respondent between January 26-29, 1993. The evidence consisted of the testimony of seventeen witnesses and forty-three exhibits. The

Commission's Counsel in the United States District Court for the Middle District of Florida seeking to enjoin the hearing.

majority of the exhibits were official court files, including the audiotaped record of many of the proceedings at issue in the hearing.

On the third day of the hearing, the Commission granted Special Counsel's motion to dismiss sixteen of the factual allegations. Special Counsel rested his case at the end of the fourth day of the hearing and the Commission granted his motion to dismiss one additional factual allegation. Respondent then moved for a directed verdict on all of the remaining charges against him.

Following argument on Respondent's motion, the hearing was adjourned on the evening of January 29, 1993, and the Chairman announced that the hearing would recess until February 23, 1993. The Commission met in deliberative session on January 30, 1993, and dismissed two of the remaining twenty-eight factual allegations against Respondent and struck portions of a third allegation. Otherwise, Respondent's motion for directed verdict was denied.

The hearing recommenced before the Commission for its fifth hearing day on February 23, 1993, and continued through February 26, 1993. The hearing proceeded on the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges which had been filed by Special Counsel and reflected the Commission's rulings on Special Counsel's motions to dismiss and Respondent's motion for directed verdict. For two and one-half days, Respondent presented the testimony of 36 witnesses and introduced approximately 140 exhibits before resting his case. Special Counsel presented two witnesses in rebuttal and the evidentiary portion of

the hearing concluded at the close of the seventh hearing day. Final arguments were conducted the following day and the Commission deliberated until a decision was reached.

II. FINDINGS OF FACT

The Commission, having heard and considered the evidence introduced at the hearing and the arguments of Special Counsel and Respondent, finds by an affirmative vote of at least nine members that Respondent violated Canons 1, 2, 3A.1 and 3A.3 of the Code

of Judicial Conduct by virtue of his cumulative misconduct. The Commission finds that Respondent repeatedly used his position as Citrus County Court Judge to make allegations of official misconduct and improper criticisms against others, exceeded and abused the power of his office by imposing improper sentences and improper use of his contempt power, acted in an undignified and discourteous manner toward those appearing in his court, acted in a manner which impugned the public perception of the integrity and impartiality of the judiciary and closed and attempted to close public proceedings.[3] The Commission further finds that Respondent's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office.

---

[3]Specifically, the Commission finds that Respondent is guilty of the allegations contained in counts 1A, 1C, 1D, 1E, 1F, 1G, 1H, 2A, 2B, 2D, 2K, 2M, 2O, 2P, 3E, 3F, 4C, 4J and 5B of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges. The Commission finds that Respondent is not guilty of the allegations contained in counts 1B, 2E, 2H, 2I, 2L, 2N, and 6C.

1. COUNT 1

Respondent has repeatedly used his position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow

judges, other elected officials and their assistants and others, without reasonable basis or due regard for their personal and professional reputations.

(A.) The Commission finds that on or about September 15, 1988, in an interview with a reporter from a local Citrus County newspaper, Respondent made a number of disparaging and insulting remarks about Citrus County attorneys, including statements that local attorneys were not on time, bickered among themselves, acted goofy, did not talk like attorneys, or dress like attorneys and that he should put them in jail where they can read law books and learn how to act in court. Respondent's statements were widely reported in the local print media and many attorneys were offended by the remarks. The local bar association issued a public statement critical of Respondent's remarks following an unsatisfactory meeting with Respondent which was mediated by the county's Administrative Judge. Respondent ultimately issued a statement in the nature of an apology for his remarks.[4] Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

[4]In his responsive pleadings and motions to dismiss, Respondent claims that the only ethical mistake he made as a judge was to issue the apology.

The clear and convincing evidence supporting this finding includes the testimony of reporter Cindy Cokely (T. Vol. II, pp. 321-354),[5] attorney Clark Stillwell (T. Vol. III, pp. 443-462), the bar association's statement (Commission Exhibit 2), and Respondent's written statement (Commission Exhibit 1).

(C.) The Commission finds that Respondent was the presiding judge in *State v. Pfeister*, a DUI case. In open court and during a hearing on February 20, 1991, Respondent accused the Office of the State Attorney for the Fifth Judicial Circuit with "routinely regulating" DUI offenses of lawyers and doctors to reckless driving for "no apparent reason." Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a transcript of the hearing (Commission Exhibit 3; T. Vol. II, pp. 304-318), and the testimony of State Attorney Brad King (T. Vol. III, pp. 485-501).

(D.) The Commission finds that in open court and in the same hearing in *State v. Pfeister*, Respondent accused State Attorney King of favoritism in the disposition of a DUI case while King was

---

[5]A copy of the transcript of the hearing and the exhibits have been provided to this Court. Citations to the transcript will be indicated by T., followed by reference to the appropriate volume and pagination.

an Assistant State Attorney. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a transcript of the hearing (Commission Exhibit 3; T. Vol.

II, pp. 304-318), and the testimony of State Attorney King (T. Vol. III, pp. 485-501).

(E.) The Commission finds that in open court and in the same hearing in *State v. Pfeister*, Respondent repeatedly demanded that the Chief Assistant State Attorney explain the exercise of discretion by the State Attorney's Office in charging the case as a misdemeanor rather than a felony and stated that the explanation was necessary so that Respondent could ascertain that the decision was not the result of politics and favoritism. Respondent's questioning of the Chief Assistant State Attorney was an unwarranted intrusion into the discretion of that office. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary. The clear and convincing evidence supporting this finding

includes a transcript of the hearing (Commission Exhibit 3; T. Vol. II, pp. 304-318).

(F.) The Commission finds that on June 10, 1991, in open court and on the record, Respondent accused State Attorney King and, by implication, Circuit Court Judge William Swigert, Chief Judge for the Fifth Judicial Circuit, with *ex parte* communications which Respondent claimed resulted in the improper revocation of his appointment as Acting Circuit Court Judge. Respondent also accused State Attorney King of improperly securing the revocation of his appointment as Acting Circuit Court Judge because King was displeased with Respondent's recent decisions in a Circuit Court case. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a videotape of the proceeding in Respondent's courtroom (Commission Exhibit 4), and the testimony of Chief Judge Swigert (T. Vol. IV, pp. 585-648), Circuit Judge William Edwards (T. Vol. X, pp. 1531-1586), and State Attorney King (T. Vol. III, pp. 485-

501). Respondent stipulated to the authenticity of the videotape (T. Vol. II, pp. 301-302).

(G.) The Commission finds that Respondent was the presiding judge in *State v. Webb*, a DUI case. In open court and during

hearings on September 10 and 17, 1991, Respondent accused a captain and an investigator with the Citrus County Sheriff's Office of "trading official actions for other beneficial acts by the defendant" in releasing the defendant on his own recognizance. [6] Respondent's remarks were unnecessary for the proper fulfillment of his judicial duties, could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary and constituted a gross abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the official court file, the audiotaped record of the proceedings (Commission exhibits 5, 5A & 5B), and the testimony of Sheriff Charles Dean (T. Vol. VI, pp. 940-996), Captain Roberta Moffatt (T. Vols. V-VI, pp. 868-936), and State Attorney King (T. Vol. III, pp. 485-501).

(H.) The Commission finds that Respondent was the presiding judge in *State v. Riggs*, a case of contempt of court. In open court and during a hearing on March 10, 1992, Respondent accused the defendant and his Assistant Public Defender of deliberately falsifying a transcript used in the defendant's appeal. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and

---

[6]Respondent's sentencing of Webb is the subject of charge 4C.

impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a video tape of the proceeding in Respondent's courtroom (Commission Exhibit 8), and the testimony of former Assistant Public Defender Johnnye Friedrich (T. Vol. VII, pp. 1080-1139). Respondent stipulated to the authenticity of the videotape (T. Vol. II, pp. 301-302).

2. COUNT 2

On various occasions Respondent exceeded and abused the power of his office by imposing improper sentences and improperly using his contempt power.

(A.) The Commission finds that Respondent was the presiding judge in *State v. Rouse*, in which the defendant was charged with misdemeanor possession of marijuana. Respondent ordered the unrepresented defendant to assist the Citrus County Sheriff in "two buys and two sells" of drugs as a condition of his sentence of twenty days imprisonment and two years probation. Incident to imposing the requirement of "two buys and two sells of drugs" as a condition of his sentence of twenty days in jail and two years probation, the Respondent had insufficient information to determine the suitability or desirability of the defendant's cooperation. This condition of the sentence was beyond the scope of his judicial authority and amounted to an abuse of his judicial power.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 21), and the testimony of Sheriff Dean (T. Vol. VI, pp. 940-996), State Attorney

King (T. Vol. III, pp. 485-501) and Assistant State Attorney James Tarquin (T. Vol. XIII, pp. 1975-2015).

(B.) The Commission finds that Respondent was the presiding judge in *State v. Shirling*, in which the defendant was charged with misdemeanor possession of marijuana. Respondent ordered the unrepresented defendant to "assist the State Attorney's Office in catching a drug dealer" as a condition of his sentence of probation. Incident to imposing the requirement that the defendant "assist the State Attorney's Office in catching a drug dealer" as a condition of his sentence of probation, the Respondent has insufficient information to determine the suitability or desirability of the defendant's cooperation. This condition of the sentence was beyond the scope of his judicial authority and amounted to an abuse of his judicial power.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 20), and the testimony of State Attorney King (T. Vol. III, pp. 485-501), and Assistant State Attorney Tarquin (T. Vol. XIII, pp. 1975-2015).

(D.) The Commission finds that Respondent was the presiding judge in *State v. Stanage*, in which the defendant was

charged with being a passenger in a vehicle in possession of an open container of alcohol. As a part of his sentence, Respondent suspended the defendant's driver's license for six months. The defendant respectfully questioned the fairness of the suspension and Respondent asked the defendant if he wanted the court to reconsider the sentence. When the defendant replied in the affirmative,

Respondent increased the suspension to nine months and asked the defendant if he wanted the court to reconsider the sentence again. When the defendant responded "yes sir", Respondent increased the suspension to one year. Respondent's treatment of the defendant was a gross abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the official court file and the audiotaped record of the proceeding (Commission Exhibits 13A and 13B).

(K.) The Commission finds that on March 15, 1992, Respondent directed the bailiff in his courtroom to summon a supervisor from the Citrus County Sheriff's Office to come to his courtroom to discuss court security. When the duty sergeant arrived, Respondent gave her instructions regarding the future

security arrangements for his courtroom. Respondent then threatened to hold the deputy in contempt if the Sheriff did not comply with his instructions. Respondent's threatening conduct was an abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of Deputy Sheriff Kim Amann (T. Vol. VI, pp 1001-1011).

(M.) The Commission finds that Respondent was the presiding judge in *State v. Oldag*, in which the defendant was charged with fleeing or attempting to elude a police officer. As part of his sentence of probation, Respondent ordered the defendant to perform forty hours of community service for the State Attorney's Office. Respondent advised the defendant that he would suspend ten hours of

the community service if the defendant washed the State Attorney's car with the T-shirt he was wearing in court. Respondent exceeded and abused the power of his office and failed to observe the

requisite high standards of conduct in his sentencing of the defendant.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 10).

(O.) The Commission finds that Respondent was the presiding judge in *State v. Barth*, in which the defendant was charged with criminal mischief for tearing up a law enforcement handbook while in the county jail. Upon learning the defendant was a shrimper, Respondent stated shrimpers were unsavory characters who tended to be in trouble. Respondent first ordered that the defendant not associate with anyone engaged in the business of shrimping. Respondent then changed his order and placed her on probation with the special condition that she find alternative employment. Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 11), and the

testimony of former Assistant Public Defender Friedrich (T. Vol. VII, pp. 1080-1139).

(P.) The Commission finds that Respondent was the presiding

judge in *State v. Douglas*, in which the defendant was charged with misdemeanor battery on his estranged spouse. As a special condition of probation, Respondent prohibited the defendant from having any contact with his children. Under the circumstances of this case, Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 12).

3. COUNT 3

The Respondent acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in his court.

(E.) The Commission finds that on or about March 27, 1989, Respondent exhibited rude, improper and inappropriate behavior in his chambers and in open court. Respondent recessed court and called an attorney who had been waiting for a hearing into his chambers. Once inside his chambers, Respondent berated the attorney, who was wearing a leather sports coat with matching slacks and tie, for being improperly dressed. While berating the attorney, Respondent offensively "poked" him in the chest with his finger. The attorney advised Respondent that he had worn the coat in approximately thirty-five state and federal courts in Florida without incident and that he did not believe the coat was

inappropriate courtroom attire. Nonetheless, the attorney apologized and informed Respondent he would not wear the coat in his court again. Respondent stated that was "not good enough" and required the attorney to wear Respondent's coat, which was several sizes too small, back into the crowded courtroom for his appearance before Respondent. The attorney testified he was greeted with laughter when he returned to the courtroom wearing Respondent's coat and described the incident as unnecessary and demeaning.

Respondent's undignified and discourteous treatment of attorney Harp violates Canon 3A.3 of the Code of Judicial Conduct, is evidence of Respondent's lack of judicial temperament and amounts to gross abuse of the power of his office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of attorney Osa Harp, III, who testified before the Commission wearing the same coat (T. Vol. VII, pp. 1141-1173).

(F.) The Commission finds that Respondent was the presiding judge in *State v. Dobbs*, a misdemeanor criminal case. In July 1992, Respondent exhibited rude, improper and inappropriate behavior in open court directed toward the mother of one of the defendants when she questioned the fairness of Respondent's six month sentence of imprisonment of her son for spray painting vulgar graffiti on public property. Respondent addressed the defendant's mother in open court and stated "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." Respondent then engaged courtroom personnel and

spectators in colloquy designed to further embarrass the defendant's mother and, in doing so, needlessly utilized vulgar, inappropriate and highly offensive language. Respondent's discourteous treatment of the defendant's mother and the unfortunate, offensive and highly inappropriate colloquy violates Canon 3A.3 of the Code of judicial conduct and is further evidence of Respondent's lack of judicial temperament.

The clear and convincing evidence supporting this finding includes the official court file and the audiotaped record of the proceeding (Commission Exhibits 28A, 28B & 28C).

4. COUNT FOUR

The Respondent conducted himself in a manner which impugned the public perception of the integrity and impartially of the judiciary.

(C.) The Commission finds that Respondent was the presiding judge in *State v. Webb*, a DUI case. Respondent sentenced the defendant on September 10, 1991, and accused the Sheriff's Office of improperly releasing the defendant on his own recognizance as an act of favoritism. Respondent stated that a ten day sentence would otherwise be appropriate if it were not for the defendant's "improper" release on his own recognizance. Respon-

dent then sentenced the defendant to ninety days in the county jail as punishment for his "improper" release. On September 17, 1991, Respondent refused to mitigate the defendant's sentence and directed the defendant to "tell your friends and that's what you got for trading favors to get out of the Citrus County jail."

- PAGE 19 -

Although the defendant's sentence was within the legal range, it is clear from Respondent's comments that the defendant's sentence was based on Respondent's unfounded allegations of impropriety. Respondent's sentence was vindictive, in violation of the spirit of due process, could reasonably tend to impugn the public perception in the integrity and impartiality of the judiciary and amounted to a gross abuse of power.

The clear and convincing evidence supporting this finding includes the official court file, the audiotaped record of the proceedings (Commission Exhibits 5, 5A, &5B), the testimony of Sheriff Dean (T. Vol. VI, pp. 940-996), Captain Moffatt (T. Vols. V-VI, pp. 868-936), and State Attorney King (T. Vol. III, pp. 485-501).

(J.) The Commission finds that Respondent improperly used the prestige of his judicial office and the resources of the State of Florida related to that office to conduct a private, unofficial investigation into alleged favoritism and corruption in Citrus County as a part of his defense in this inquiry. The evening of Respondent's Rule 6B hearing on the Notice of Formal Charges, he appeared on a local cable televisicn show. Respondent "speculated" as to the nature of the rumored investigation against him, criticized and insulted various public officials including the State Attorney, the Sheriff, and other judges, denied any unethical conduct and theorized that any investigation by the Commission resulted solely from pressure and harassment exerted on the Commission by Respondent's political enemies who were seeking revenge for Respondent's role in the removal from office of former

Citrus County Court Judge Leonard Damron. Respondent arranged for the display of his official title, name, courthouse address and telephone number during the broadcast and urged viewers with information regarding political favoritism in Citrus County to contact him at his judicial office and share their information.

Respondent requested that a deputy clerk obtain the driving records of various local attorneys, a neighboring judge and others as a part of his investigation and defense. Respondent did not make the customary payment for the records.

Respondent's unfounded and unnecessary public attacks and allegations of misconduct directed toward others and his use of his judicial office to further his investigation of a "good old boy" network impugned the impartiality of the judiciary. Respondent's use of the resources of the State of Florida in conducting his private investigation and defense was improper.

The clear and convincing evidence supporting this finding includes the testimony of the Chief Deputy Clerk of the Circuit Court of Citrus County (T. Vol. VIII, pp. 1331-1335), and Susan Smith, a deputy clerk who served in Respondent's courtroom (T. Vol. VIII, pp. 1292-1329). The evidence also includes a videotape of Respondent's television appearance, introduced into evidence by Respondent (Respondent Exhibit 20A & 20B), and the testimony of the host of the show, Thomas Franklin (T. Vol. VIII., pp. 1201-1216).

5. COUNT 5

The Respondent closed and attempted to close public proceedings and in doing so instructed and threatened others to keep the proceedings secret.

(B.) The Commission finds that in June 1991, Respondent was Acting Circuit Court Judge for Citrus County due to the temporary absence of the Circuit Court Judge normally assigned to the county's criminal docket. Without notice, Respondent summoned several attorneys from the State Attorney's Office and the Office of the Public Defender to come to the office of the absent Circuit Court Judge for an immediate hearing. The attorneys were taken into the judge's chambers still not knowing why they had been summoned there in the first place. Present were Respondent, the attorneys and a court reporter. Once in the judge's chambers, which are not open to the general public, Respondent called to order *State v. Barrett*, a high profile capital murder case. Respondent stated that it was his intention to schedule a status conference in the near future to handle "some administrative matters." He stated that the defendants would not need to be present and that he would not need the court file. He ordered that State Attorney King, his chief assistant and others be present for the conference.

Respondent stated that he did not want a "bunch of newspaper reporters" present and if necessary he would instruct them to leave. He advised the court reporter not to "wag tongues" and stated that if any reporters appeared he would know somebody talked. The conference did not occur because Respondent's appointment as an acting Circuit Court Judge was revoked.

- PAGE 22 -

Respondent's conduct was clearly improper and contrary to the law and procedure relating to the closure of court proceedings established by this Court in *Miami Herald v. Lewis*, 426 So . 2d 1 (Fla. 1982) and its progeny.

The clear and convincing evidence supporting this finding includes a transcript of the hearing, stipulated into evidence by Respondent (Commission Exhibit 36; T. Vol. VII, pp. 1191-1192), and the testimony of Assistant State Attorney Lisa Porter (T. Vol. VII, pp. 1187-1201; 1223-32), and former Assistant Public Defender Edwin Bonnett (T. Vols. XII-XIII, pp. 2131-2181).

The evidence of Respondent's cumulative misconduct is virtually undisputed. The vast majority of the allegations were proven by official court records. Some of the allegations were

proven by evidence which was the subject of stipulations between Special Counsel and Respondent. Respondent was given ample opportunity at the hearing to present his evidence relating to the charges.

6. ADDITIONAL FINDINGS

(A.) The Commission finds, based upon the evidence introduced at the hearing, that the nineteen proven incidents of misconduct discussed above are not isolated events, but are a part of a pattern of similar misconduct, characterized by Respondent's arrogant, arbitrary and capricious abuse of the powers of his office. This finding is based, in part, on the testimony of Chief

Judge Swigert, who testified that he removed Respondent from criminal cases in October 1992, because the Citrus County Court had turned into "embarrassment" and a "circus" (T. Vol. IV, pp. 585-648), as well as the testimony of Circuit Judge William Edwards (T. Vol. X, pp. 1531-1562), Assistant Public Defender Angela Miller (T. Vol. XVI, pp. 2484-2527), Assistant State Attorney Liz Osmond (T. Vol. XVI, pp. 2556-2664), former Assistant Public Defender Friedrich (T. Vol. VII, pp. 1080-1139), and

attorney Harp (T. Vol. VII, pp. 1141-1173), who all testified regarding Respondent's abusive conduct.

The Commission finds that Respondent's proven incidents of misconduct, together with the evidence of his pattern of arrogant, arbitrary and capricious behavior clearly establish that Respondent lacks proper judicial temperament.

(B.) Respondent refused to testify in his own case and when called as an adverse witness his testimony was evasive (T. Vol. III, pp. 383-440). His actions, attitude and activities during the hearing were often disruptive, scandalous, improper and contemptuous (T. Vol. V. pp. 727-728). The Chairman, in charging Respondent with contempt of the Commission, stated that Respondent had continuously disregarded the instructions of the Chair, intentionally delayed the proceeding, made demeaning remarks to the Chair and failed to comply with the Chair's instructions for the orderly presentation of the evidence. (T. Vol. V, pp. 709-710).

- PAGE 24 -

The Commission also finds that Respondent has admittedly utilized the services of his state paid judicial assistant in the preparation of his defense to these charges. The involvement of his

judicial assistant in his defense had not been incidental or occasional. To the contrary, based upon her testimony and Respondent's stipulations, her involvement has been substantial and consuming for approximately ten months. The evidence established that his judicial assistant prepared numerous and voluminous motions, pleadings, memoranda, petitions, exhibits, transcripts, subpoenas, correspondence and other material related to this inquiry. The Commission also finds that Respondent has made various long distance telephone calls at state expense and utilized other incidental resources of the State in his defense. [7]

III. CONCLUSIONS OF LAW

The Commission, having heard and considered the evidence introduced at the hearing and the arguments of Special Counsel and Respondent, finds by an affirmative vote of at least nine members that Respondent's cumulative conduct in violation of Canons 1, 2, 3A.1 and 3A.3 of the Code of Judicial Conduct is unbecoming a

---

[7]The testimony of Respondent's judicial assistant, Joette Uzar, is found at T. Vol. VIII, pp. 1239-1290. Respondent stipulated that his judicial assistant prepared "all of the pleadings in this case and any other document...she did it while a JA in my office; that she was paid by state funds; that it took her hours; and it was a lot of work and a lot of stress and heartache" (T. Vol. VIII, p. 1241). Respondent also stipulated that his judicial assistant "used the telecopier, the

telephone, the typewriter...she has worked extensively on this case..." (T. Vol. VIII, p. 1254).

member of the judiciary and demonstrates a present unfitness to hold office. The Commission's findings are made in light of its application of the relevant authorities to the clear and convincing evidence of Respondent's misconduct.

The Florida Constitution provides for the Commission and vests it with jurisdiction to investigate and recommend to this Court the removal from office of any judge whose conduct during term of office demonstrates a present unfitness to hold office. Art V Sec 12(a), *Fla. Const.* Upon recommendation of two-thirds of the Commissioners, this Court may order the removal of any judge for conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office. *Id.* at Sec. 12(f). Malafides, scienter or moral turpitude is not required for removal from office of a judge whose conduct demonstrates a present unfitness to hold office. *Id.*

The Code of Judicial Conduct provides:

Canon 1
A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2
A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that

promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3
A Judge Should Perform the Duties of This Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

...

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

In deliberating and reaching its decision, the Commission has considered the fundamental principle that conduct unbecoming a member of the judiciary may be proven by major incidents which indicate such conduct or by evidence of an accumulation of small or otherwise innocuous incidents which, considered together, show a pattern of conduct unbecoming a member of the judiciary. *E.g.*, *In*

Re Kelly, 238 So.2d 565 (Fla. 1970). The Commission finds that Respondent's nineteen proven violations over a period of approximately four years are a sufficient accumulation of incidents to establish a pattern of conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold judicial office.

Respondent's cumulative misconduct proven under Count One of the Amended Consolidated Notice of Formal Charges and

Amendment to Notice of Formal Charges violates the indicated Canons. Guided by *In Re Kelly*, 238 So.2d 565 (Fla. 1970), the Commission focused its inquiry on whether Respondent's motives or methods did violence to the Canons and therefore constitutes conduct unbecoming a member of the judiciary. *Kelly* teaches us that when a judge criticizes others, the criticism must be viewed as constructive or destructive. If a judge has been temperate and judicious, his criticisms will likely benefit the community. However, impetuous argument, criticism taken by methods which prevent honest discussion and fair rebuttal can only be expected to have a destructive result. *Id.* at 569-570. The Commission finds that Respondent's cumulative misconduct demonstrates an unacceptable pattern of hostility toward other judges, the State Attorney, the Sheriff, other elected officials and their assistants and others; the Commission further finds that Respondent's cumulative misconduct was destructive in nature, created significant turmoil within the Citrus County judicial system and is therefore conduct unbecoming a member of the judiciary.

Respondent's cumulative misconduct proven under Count Two of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. Respondent threatened to hold a deputy sheriff in contempt if the Sheriff did not comply with Respondent's instructions relating to security in his courtroom. He compelled unrepresented defendants to work as confidential informants as a condition of their sentence without sufficient information to determine their suitability and desirability to be informants. He separated a father from his children, compelled a shrimper to quit her trade and even stated that he would give a defendant credit for a portion of his community service requirement if he washed the State Attorney's car with his T-shirt. When a defendant respectfully questioned the fairness of his sentence, Respondent doubled the suspension of the defendant's driver's license. The Commission finds that Respondent's misconduct demonstrates a lack of proper judicial temperament and a tendency to abuse the authority of his office; his arrogant, arbitrary and capricious abuse of the power of his office, which occurred over an extended period of time, is like that of *In*

Re Crowell, 379 So.2d 107 (Fla. 1980) and is conduct unbecoming a member of the judiciary.

Respondent's conduct proven under Count Three of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. The disparity in power between a judge and a litigant or attorney requires that a judge be courteous, patient and understanding. Canon 3 A(3)

- PAGE 29 -

requires that a judge "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others...." Conduct reminiscent of a playground bully is improper, harms the integrity of and is conduct unbecoming a member of the judiciary. *In Re Eastmoore*, 504 So. 2d 756 (Fla. 1987).

Respondent's conduct proven under Count Four of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. Respondent's misconduct has impugned the perception of the integrity and impartiality of the judiciary. It is clear that Respondent sentenced Webb to eighty additional days in the county jail

based on Respondent's perception of favoritism. Webb was never tried for any offense related to his release on his own recognizance because the investigations by the State Attorney's Office and Sheriff's office found no criminal violation. Nonetheless, Webb spent eighty days in jail based on Respondent's perception of impropriety.

Respondent's appearance on television, his criticisms and allegations of misconduct against others in that broadcast and his request for citizens to contact him at his judicial office with any examples of politics and favoritism was improper, cast serious doubt on Respondent's ability to be neutral and impartial, runs afoul of *In Re Kelly*, 238 So.2d at 565 and *In Re Taunton*, 357 So.2d 173 (Fla. 1978), and is conduct unbecoming a member of the judiciary. His use of state resources to conduct a private investigation and further his defense to these charges was unauthorized, contrary to established law, runs afoul of *In Re*

Lamotte, 341 So.2d (Fla. 1977), and is also conduct unbecoming a member of the judiciary.

Respondent's conduct proven under Count Five of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. The evidence is undisputed and establishes that while an Acting Circuit Court Judge, Respondent conducted a closed conference and stated that it was his intention to conduct further closed proceedings in a criminal case without complying with appropriate law and procedure. By holding hearings without proper notice and in chambers without the presence of the defendants, by stating his intention to conduct further such conferences to handle "some administrative matters" and ordering and threatening others that the improper conferences were to remain secret; Respondent failed to respect and comply with the law, created impropriety and the appearance of impropriety and conducted himself in a manner unbecoming a member of the judiciary.

In order for our judicial system to function properly and fulfill its role in society, it is essential to maintain public confidence in the dignity, integrity and impartiality of the judiciary. When a judge continuously acts in a manner to undermine this confidence,

drastic action, including removal from office, is required. *In Re Trettis*, 577 So.2d 1312 (Fla. 1991).

III. RECOMMENDATION

The Commission hereby recommends to this Court, by a vote of at least nine members, that Respondent be removed from the Office

of Citrus County Court Judge. The Commission's recommendation is based upon and made in light of the clear and convincing evidence of Respondent's cumulative misconduct, consisting of at least nineteen proven incidents occurring over a period of approximately four years, which have undermined public confidence in the dignity, integrity and impartiality of the judiciary. Additionally, the turmoil in the Citrus County Court resulting from Respondent's misconduct is evidence of Respondent's general pattern of arrogant, arbitrary and capricious abuse of the power of his judicial office, his lack of proper judicial temperament and his conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold that office.

Respondent has repeatedly and consistently failed to even acknowledge the existence of his misconduct, much less demonstrate an understanding of its gravity. To the contrary, he has consistently and repeatedly characterized the charges against him as "trivial". The Commission is therefore convinced that if Respondent is permitted to remain in office, he, quite naturally and with a sense of impunity, would commit further violations of the Code of Judicial Conduct by continuing a pattern of arrogant, arbitrary and capricious abuse of the power of his office. The removal of Respondent from office is the only sanction which will adequately protect the public and restore confidence in the dignity, integrity and impartiality of the judiciary.

The Commission, in accordance with and pursuant to the applicable provisions of the Article V, Section 12 of the Florida

Constitution and the Florida Judicial Qualifications Commission Rules, by a vote of at least nine members and based upon clear and convincing evidence of cumulative misconduct, finds Judge Gary G. Graham violated Canons 1, 2, 3A.3 of the Code of Judicial Conduct and is guilty of conduct unbecoming a member of the

judiciary demonstrating a present unfitness to hold judicial office and recommends to the Supreme Court of Florida that Judge Gary G. Graham be removed from the Office of Citrus County Court Judge.

Dated the 20th day of April, 1993

Respectfully Submitted,

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

/s/Joseph J. Reiter
Joseph J. Reiter, Esq., Chairman
The Historic Capitol
Room 102
Tallahassee, Florida 32399-6000

DOCUMENT 3

Judge Graham's Proffer to an Empty Courtroom

- PRETRIAL CONFERENCE PAGE 314 -

* * *

THE CHAIRMAN: All right. Now, it is my intent, once again, to start at 9 o'clock, to take a morning break, to go to lunch in the afternoon, and then to go as late as we deem with that particular day or presentation of the evidence; but it's the Commission's intent to finish this matter by Friday.

JUDGE GRAHAM: One point of clarification?

THE CHAIRMAN: Sure, Judge.

JUDGE GRAHAM: After you leave, I'm supposed to voice my objections for the record?

* * *

- PRETRIAL CONFERENCE PAGE 317 -

(Recess from 5:39 p.m. to 5:41 p.m.)

JUDGE GRAHAM: I'd like to voice my objections to the proceedings on the record as allowed by the Chairman.

I would bring to the appellate court's attention that I'm standing in a hearing room before the bench, with no presiding official, making these statements. This is yet another first in my

experiences in process of law. I'd also -- let the record reflect that Special Counsel has left.

Mr. Bailiff, could you close the door? Mr. Bailiff, could you have that door closed, too, because of the --

As I was saying, this is -- Mr. Bostic and General Counsel have left, and I'm here arguing objections to the proceeding to Madame Court Reporter alone. This is yet another first in my experiences of what is supposed to be a process of law with the Judicial Qualifications Commission.

I've never before been involved in any proceedings where motions were heard without notice and without hearing, where the dispositions are approved by the Commission

- PRETRIAL CONFERENCE PAGE 318 -

without notice of their hearing date, without an opportunity to argue the rulings of the Motion Committee, and where proffers are made after -- both evidence, relevancy, and objections are made to an empty courtroom after everyone leaves. I've never seen that done before, and I just hope it will convince the appellate courts that we are not proceeding according to any rules of law or procedure known to advocates of law.

I object, Mr. Chairman, to the fact that this motion in limine was somehow decided upon by the Motion Committee. I've never seen the Motion Committee -- excuse me -- this motion in limine with respect to this evidence; not the filed motion in limine, but the motion in limine which has been argued these past nine hours.

I never saw a member of the Motion Committee here except for Chairman Reiter. If he had any discussions with the members of the Motion Committee, I don't know what they were. I wasn't given an opportunity to challenge anything that he said to them. I was not willing to make arguments of law to the other

- PRETRIAL CONFERENCE PAGE 319 -

Motion Committee members. And somehow or other, the Motion Committee was able to basically destroy my case and prevent me from defending myself, and I have no idea on what basis they did that.

I would restate my objections to that process based on the decisional authority of Hastings v. United States and Nixon v. United States where the United States Supreme Court has stated that where a deliberative body is created by the constitution, that it is an impermissible denial of due process and unconstitutional to

delegate a subgroup to make those deliberative functions -- deliberative decisions. In this case we've had both an institutionalized delegation of that authority followed by an ad hoc delegation of that authority.

First, the Commission, by its own rules, allowed motions to be heard by a three-member group, thus denying the respondent judge the benefits of the diversity of representation contemplated by the Florida State Constitution and his right for the full body to hear the evidence and the arguments -- that's an

- PRETRIAL PAGE 320 -

institutionalized problem. It's inherent in the rules -- followed by the fact that in today's proceedings, evidently the Motion Committee itself subdelegated its authority to Mr. Reiter. And, of course, as I pointed out Mr. Reiter is an individual who has twice threatened me with contempt and, in his words, recommended that I be incarcerated. So I hope that the appellate courts will understand the degree of derogation that has been imposed on my fundamental right to constitutional procedures and due process of law.

I would object to the massive intrusion into the defense of this case, represented by the rulings on evidence, in which I'm

fundamentally not being allowed to raise any affirmative defenses, and I'm not being allowed to present collateral, circumstantial, and corroborative evidence into the record.

I would also note for the record that Special Counsel had an opportunity months ago, when the affirmative defenses were filed, to respond to those pleadings by a motion to strike. Special Counsel chose not to strike the affirmative defenses. Special Counsel

- PRETRIAL PAGE 321 -

chose to deny them. That closed the pleadings on or about December 30th. Now, the effect of not striking the affirmative defenses but denying them was to put them at issue.

And then, by Special Counsel's count, respondent judge then proceeded to take 81 depositions in approximately 35 days, many of which were directed to his affirmative defenses. Furthermore, respondent judge set about obtaining court files, audio transcripts, preparing transcripts of audio tapes, and obtaining -- strike that -- pursuing very expensive, time-consuming efforts toward proving his affirmative defenses.

And then, to compound the fact that the Commission has dismissed almost half of the charges brought against the respondent judge, it then says, "Not only have you wasted all that time, effort, and money toward 19 charges which we abandoned, but now all the time, effort, and money you have spent toward your defense on the affirmative defenses is wasted." And fundamentally, the Commission has taken the position that all that's at issue is: Did you say it? And, in our view, is it

- PRETRIAL PAGE 322 -

unethical.

And I am now in a position where, basically, I have nothing really to defend myself with; and I hope that the appellate courts will recognize this as substantial evidence of this Commission's real prejudice and bias against me, a prejudice which comes from the fact that I have, as part of what I thought were my ethical obligations to stand up for the integrity and independence of the judiciary, to criticize misconduct of those before the court and that those criticisms included criticisms of attorneys and judges and others involved in the court system and that now I am being judged by attorneys and judges and influential people.

And they not only are a group of attorneys and judges and influential people who are going to be my judges, but they are the people or the individuals or the institution that investigated and decided to charge me. And it seems apparent to me that the problem is: This Commission now does not want to face the reality that it made a mistake, and the way to avoid that reality is to not allow this

- PRETRIAL PAGE 323 -

respondent judge to defend himself.

I don't believe the Commission wants to hear how bad the conduct of some attorneys have been in this county, I don't think they want to hear about the politics and the favoritism in this small, rural county, and I don't think they want to know the truth. I think that this Commission just wants to find me guilty of misconduct.

And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the denial of my due process rights to make a defense against these false and trivial charges. End of objection.

(Proceedings conclude at 5:52 p.m.)

DOCUMENT 4

Excerpts from the Record Demonstrating the Conduct of the JQC during the Proceedings

- PAGE 122 -

* * *

JUDGE GRAHAM: I accept the ruling but would now ask to proffer my opening statement for the purposes -- excuse me. Let the record reflect that this individual, Mr. Kaney, is over there again shaking his head no. I would ask to --

* * *

- PAGE 134 -

* * *

JUDGE GRAHAM: Well, I want to be able to see the witness.

THE CHAIRMAN: If you stand right there, is that okay, Judge?

JUDGE GRAHAM: No. Because then I can't see the Commissioners.

THE CHAIRMAN: Well --

JUDGE GRAHAM: Let the record reflect that the Commissioners are laughing at that.

- PAGE 190 -

* * *

JUDGE GRAHAM: The objection is that the trier of the facts is discussing the case with

- PAGE 191 -

the attorney that is opposing me and correcting him, and I would move for a mistrial based on that.

* * *

- PAGE 216 -

* * *

JUDGE GRAHAM: Another objection I have not been able to make yet is that there seems to be a disparity in the facilities being provided here.

Let the record reflect that Judge --

- PAGE 217 -

Chairman Wigginton clucked at that. It may be funny to him, but --

THE CHAIRMAN: Please, Judge Graham --

JUDGE GRAHAM: Let the record reflect that the rest of the Commission -- several other members of the Commission are smirking at that.

* * *

- PAGE 268 -

* * *

BY JUDGE GRAHAM:

Q I show you what's been marked as Commission's Exhibit No. 28-B. Can you identify that?

A It's an audio cassette.

JUDGE GRAHAM: Let the record reflect that members of the Commission are whispering with each other during the presentation of the evidence.

BY JUDGE GRAHAM:

Q Can you identify that any more clearly than the fact that it's an audio tape?

- PAGE 269 -

JUDGE GRAHAM: Let the record reflect that they're continuing to discuss things while the evidence is being presented.

* * *

- PAGE 304 -

* * *

JUDGE GRAHAM: Mr. Commissioner, due to the fact that I have been unable to properly prepare for trial, I have not been able to locate the witness list supplied by Mr. Bostic.

MR. BOSTIC: I have another copy.

I spoke too soon. I previously provided the respondent with a witness list. I don't have a copy right now. I can bring him a copy.

COMMISSIONER GILLMAN: Here's one right here.

JUDGE GRAHAM: Let the record reflect that one of the Commissioners has assisted the employee-attorney, Mr. Bostic, with a copy.

* * *

- PAGE 310 -

* * *

COMMISSIONER KANEY: How many pages is this document?

MR. BOSTIC: It's approximately 20 pages, I think.

COMMISSIONER KANEY: Just so we know if

- PAGE 311 -

we've got another 20 minutes or so.

MR. BOSTIC: Twenty-one pages.

COMMISSIONER KANEY: Thank you.

JUDGE GRAHAM: I would object for the record that the prosecutor, who was hired by the trier of fact, is discussing the case with the trier of fact, who is also asking questions of the trier of law.

THE CHAIRMAN: Judge, I have no idea what you just said.

JUDGE GRAHAM: What?

THE CHAIRMAN: I have no idea what you just said.

JUDGE GRAHAM: What I'm saying is: You decide the issues of law, they decide the issues of fact, he prosecutes me, and he's your employee, and he's your employee, and you're all discussing this case like it's a roundtable or something --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- and that is a denial of due process.

THE CHAIRMAN: -- I have not discussed this case with anybody. Your statement --

JUDGE GRAHAM: He was making comments to

you.

THE CHAIRMAN: Judge, for the record, your statement you just made is inaccurate. I've been sitting here watching you reading that transcript. I have not spoken to anyone.

JUDGE GRAHAM: You keep --

THE CHAIRMAN: All right. Now, Judge --

JUDGE GRAHAM: But comments have been directed to you, and that --

THE CHAIRMAN: Judge, you are making statements on the record that are inaccurate, and I will correct the record. I have not been speaking to anybody.

JUDGE GRAHAM: I will stand corrected. This individual right here, Mr. Kaney, directed comments to you. You are correct. You did not respond. All of which would have been highly improper in a normal jury trial.

THE CHAIRMAN: Judge, I am waiting for your objections to that exhibit. We have now been waiting about eight minutes while you've been reading it, so --

JUDGE GRAHAM: If the prosecutor, the trier of fact, and the judge -- if the communications will stop, I can go ahead and

read this document and then be in a position to voir dire on it.

* * *

- PAGE 347 -

* * *

JUDGE GRAHAM: I will note for the record that no one is objecting to the waste of time for this witness to peruse this document for several minutes. I would note that for the record.

Let the record reflect that the Chairman, the decider of law and presiding as a quasi judge in the matter, handed documents to General Counsel, who then handed documents to Special Counsel.

* * *

- PAGE 350 -

* * *

JUDGE GRAHAM: Let the record reflect that the Commissioners are shaking their heads just because I'm attempting to show that this

- PAGE 351 -

witness has no recollection of the event.

THE CHAIRMAN: The Chair did not see anybody shaking their head, but please go ahead.

JUDGE GRAHAM: This individual right here, Mr. Tate --

THE CHAIRMAN: Please continue.

JUDGE GRAHAM: -- was shaking his head and clucking his tongue about this.

* * *

- PAGE 489 -

* * *

JUDGE GRAHAM: And I object, and I will note for the record that this individual right

- PAGE 490 -

here came and grabbed me by the arm and told me to move.

THE CHAIRMAN: Judge, please return to where I asked you to stand.

JUDGE GRAHAM: I would like to voice my objection, because I have been charged --

THE CHAIRMAN: Judge, that is not a legal objection. Please back off --

JUDGE GRAHAM: I would --

THE CHAIRMAN: -- and go back to where you were standing.

JUDGE GRAHAM: -- like a record of what has occurred to me by --

THE CHAIRMAN: Judge, do not talk when I am ordering you to do something. . . .

* * *

- PAGE 522 -

* * *

JUDGE GRAHAM: Please --

COMMISSIONER BARNES: I wasn't sleeping.

THE CHAIRMAN: Judge, please do not make comments to the Commissioners.

JUDGE GRAHAM: I think it's proper to ask them to wake up.

* * *

- PAGE 528 -

* * *

JUDGE GRAHAM: I've lost that document that she just marked.

THE CHAIRMAN: It is not in the clerk's

- PAGE 529 -

hands?

JUDGE GRAHAM: She was reading it, and that's the reason I couldn't find it. Let the record reflect that the Commission is laughing about that. Why it's funny that I couldn't find it --

* * *

- PAGE 409 -

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: The affidavit has been filed by Judge Graham indicating that Mr. Tate was reading the newspaper; that Judge Burnstein and Nancy were talking; that Mr. --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Do not interrupt me, Judge, please -- that Mr. Clark was reading the newspaper during the proceedings and appeared to be sleeping at one -- at one -- and it's not completed. Number four, Commissioner Burnstein was reading the comics in the newspaper. Number five, Mr. Kaney was making nonverbal gestures at Chairman Reiter. Six, that Sybil Barnes appeared to be sleeping during the proceedings. Finally -- and he says finally, "These individuals were ready, willing, and able to testify before

the Commission," and he has affidavits from a Helen Zebby, Z-e-b-b-y, George -- and I cannot read the writing --

MR. LIZANETZ: Lizanetz.

THE CHAIRMAN: -- L-i-z-a-n-e-t-z, Mr. Joe Bodi, B-o-d-i, and the last one is Alex I-l-n-y-z-k-y.

JUDGE GRAHAM: And Mr. Mason.

- PAGE 410 -

THE CHAIRMAN: All right. The Commission will not take testimony. This is outside the rules. The Commission, according to Rule 26, has already been challenged once in toto and in person, and the affidavit filed will be considered by a vote of seven or more of the Commissioners voting in reference to whether you want to have an excusal of any of these individuals.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned. The affidavit is what we travel on. I'm going to adjourn for one minute for a vote on this, and I'll announce my vote on it. We will do it in executive session. Please step out for one second.

JUDGE GRAHAM: I demand, under the public meetings law, to be present during this public meeting.

THE CHAIRMAN: Objection -- your request is denied. We'll be right back. I do not want anyone -- Mr. Bostic and Judge Graham, we're going to be right back after this.

* * *

- PAGE 644 -

* * *

THE CHAIRMAN: Judge, will you pay -- don't turn your back to me and make comments to the Commission. I have just ruled. The question is being answered. Please pay attention to me. Please answer the question.

JUDGE GRAHAM: The Commissioner said, "Jesus Christ."

THE CHAIRMAN: Judge, please. Judge, I'm asking you to pay attention to your questions of this witness and my rulings. His question is --

JUDGE GRAHAM: I would move for a mistrial based on the fact that this Commissioner has prejudiced the minds of the other Commissioners by making an explanation of "Jesus Christ." And that's exactly the way he did it --

- PAGE 706 -

* * *

JUDGE GRAHAM: May I ask permission to note for the record that Ms. Barnes was sleeping again? And I tried to get the television to get her, but by the time I got over there, she woke up.

* * *

- PAGE 776 -

* * *

JUDGE GRAHAM: Let the record reflect --

THE CHAIRMAN: Don't make any remarks to the record unless you have permission from this Chair.

JUDGE GRAHAM: May I have a permission to note for the record that Mr. Tate is laughing at the fact that I asked permission from Ms. Schumacher --

THE CHAIRMAN: All right. Move on. . . .

* * *

- PAGE 1492 -

* * *

JUDGE GRAHAM: I would like to clarify for the record -- I have received a transcript of our previous hearing proceedings,

and I would like to clarify for the record that the man that grabbed me during the proceeding was Mr. Roy Rhodes, General Counsel for the JQC.

MR. RHODES: I did what?

JUDGE GRAHAM: Grabbed my arm, right

- PAGE 1493 -

here.

THE CHAIRMAN: All right. What else do you have to present?

JUDGE GRAHAM: Any objections to that? Anyone?

THE CHAIRMAN: Please continue.

MR. RHODES: No objection to the fact that I moved you out of my line of vision from the Commission, Judge Graham, pursuant to the direction that you had already received from the Chairman.

JUDGE GRAHAM: I would also make an objection at this time, based on due process of law, that the rulings of this Commission on what evidence I may present are so convoluted and complex that I can honestly state to you, Mr. Reiter, that I really -- I am going to be proceeding in great fear of not being able to

comply with them, because they are so complicated and complex and convoluted that I don't understand them.

* * *

- PAGE 2058 -

* * *

I would make a note for the record -- permission -- that Ms. Burnstein is looking at some type of calendar.

THE CHAIRMAN: Judge, would you please finish your proffer?

JUDGE GRAHAM: I would respectfully request --

THE CHAIRMAN: Are you finished with the proffer? We are going to conclude it if you don't continue with your proffer.

JUDGE GRAHAM: Okay. I will continue under protest. And that she's continuing to look at it.

THE CHAIRMAN: Judge, please do not be debating the issue with me. Finish your proffer.

* * *

- PAGE 2070 -

judges. The trial judge can do relatively little about bad preparation, inept examination of witnesses, or general incompetence of

the lawyers, but he can do a great deal about the bad manners and bad ethics of the fringe of the legal profession who sometimes make the trial look like a brawl. I regret to say that too few trial lawyers" -- excuse me; "too few trial judges" -- "exercise proper control of their own courtrooms to enforce minimum standards of etiquette, deportment, and ethics. But the infirmities and shortcomings of judges is not my subject, and I will leave this parenthetical observance as a mea culpa of the judiciary."

I understand that's when you want me to stop.

THE CHAIRMAN: Thank you, Judge. All right. We will read and we will review the article again as Exhibit No. -- 20. Is that correct?

COMMISSIONER GILLMAN: 21.

THE CHAIRMAN: 21. Exhibit No. 21.

JUDGE GRAHAM: May have permission to note for the record that Ms. Burnstein sneered at me during the rest of my presentation?

* * *

JUDGE GRAHAM: I want to lay a predicate for why this his fellow has had numerous contacts with the court system because -- when you're a self-made businessman making millions of dollars, you wind up in court an awful lot. That's all I'm trying to do.

MR. BOSTIC: Well, this witness is listed on the list as --

JUDGE GRAHAM: Okay. I'll withdraw the question.

THE CHAIRMAN: All right. Proceed, please.

BY JUDGE GRAHAM:

Q Sir, as a result of your --

JUDGE GRAHAM: I would like the record to

- PAGE 2226 -

reflect that Ms. Burnstein is laughing at that.

* * *

- PAGE 2291 -

* * *

THE WITNESS: Could I go? I mean --

THE CHAIRMAN: I presume so.

JUDGE GRAHAM: David Cropper.

Excuse me. Permission to note for the record that Mr. Bostic is conferring with General Counsel for the JQC.

* * *

- PAGE 2326 -

* * *

THE WITNESS: In the most general way, sir. I have not read them with particularity. It is my way to read things with particularity and be able to address them in detail. I cannot do that. As a lay person, I know about them.

COMMISSIONER TATE: You made a comment, and I'm quoting --

JUDGE GRAHAM: I object to the continuing adverse impeachment of my witness -- my character witness -- by the trier of facts, and I would move for a mistrial.

THE CHAIRMAN: Your motion for a mistrial is denied, and I don't look at these questions as adverse questions.

JUDGE GRAHAM: And I object based on the due process rights --

THE CHAIRMAN: I don't look at them that way.

JUDGE GRAHAM: -- of the federal constitution.

THE CHAIRMAN: I understand that, Judge.

- PAGE 2327 -

You may continue, Mr. Tate.

* * *

- PAGE 2358 -

* * *

JUDGE GRAHAM: Mr. Commissioner, at this time I wanted to make a mistrial based on the following conduct:

During the testimony of Mr. Cury, I asked the question, "Does a leopard change his spots?" One of the Commissioners said, "Yes," and that is why Mr. Cury responded to that, and he was the person that Mr. Cury was saying -- in response to what that gentleman said.

That is an obvious showing of bias and prejudgment of me and -- not only shows his bias and prejudgment, but it affected the other members of -- the triers of the fact who are supposed to be impartial, and I would move for a mistrial.

THE CHAIRMAN: Your motion is denied. Please continue.

- PAGE 2359 -

JUDGE GRAHAM: And I would preserve my federal objection to due process of law.

* * *

- PAGE 2446 -

* * *

THE CHAIRMAN: Judge, my ruling is: Unless it is something that could not have been presented in the case-in-chief that -- I'm going to stand on that, and they will not be allowed as rebuttal witnesses. Now, my question is: Is there anyone else, Mr. Bostic?

MR. BOSTIC: No, sir.

THE CHAIRMAN: Anything of the Commission members before we adjourn in reference to anything?

Now, is there going to be any other rebuttal testimony, Mr. Bostic?

MR. BOSTIC: No, sir.

COMMISSIONER GILLMAN: We'd like to talk. Could we have a conference?

THE CHAIRMAN: All right. It's requested by one of the members to have a conference.

- PAGE 2447 -

You will wait until we come back. It may be in reference to my recent ruling.

(Recess from 12:28 p.m. to 12:40 p.m.)

THE CHAIRMAN: All right. The Chair's ruling is going to be reversed on the basis as follows: The rebuttal witnesses -- those two rebuttal witnesses will be allowed, . . .

* * *

- PAGE 2503 -

* * *

Q Who are the other judges that you have seen that have engaged in bizarre conduct?

A One that's a little strange would be -- he's now a circuit judge -- Vernon Douglas.

Q And what --

A Third Judicial Circuit.

Q -- circuit he is in?

A Third.

Q And what other strange, bizarre judges do you know?

A Another one that was a little strange is Judge Royce Agner, Third Circuit. He's now retired.

Q So in addition to me, Judge Douglas is bizarre and Judge Agner is bizarre. Correct?

A They were a little strange, yes.

Q Any others that were bizarre?

A Not to my knowledge, no.

Q And why was Judge Douglas so bizarre?

A Judge Douglas, at the time, was a county court judge. If someone from Georgia came into court, he would ask the clerk for a crayon so they

- PAGE 2504 -

could sign their name.

THE CHAIRMAN: All right. Please.

JUDGE GRAHAM: Let the record reflect that the jury is laughing, and I'd like to subpoena Judge Douglas and have him tell his side of this story.

* * *

- PAGE 2616 -

* * *

Q And didn't you state in the newspaper that the reason you were going to go along with that was because you just didn't think that the ruling of Judge Graham had been fair? Isn't that true?

A I don't know if I said that. I think it.

JUDGE GRAHAM: Let the record reflect a member of the Commission laughed at that.

THE CHAIRMAN: Judge, please do not be saying "Let the record reflect" unless you get permission from me. Let's move on.

* * *

- PAGE 2628 -

* * *

BY JUDGE GRAHAM:

Q And isn't it true that the information that you provided him was incorrect also?

JUDGE GRAHAM: Let the record reflect that one of the Commissioners is audibly yawning.

THE CHAIRMAN: Judge, what did I say about doing that?

JUDGE GRAHAM: Excuse me. I apologize. Permission?

THE CHAIRMAN: All right. Go ahead and say he yawned, somebody yawned.

JUDGE GRAHAM: With permission I would state for the record that one of the Commissioners audibly yawned so loud I could hear it almost halfway across the room.

THE CHAIRMAN: Okay. Let's continue on.

* * *

- PAGE 75 -

MR. BOSTIC: The next group: Approximately ten witnesses to testify concerning the alleged misconduct of the members of this Commission. Jurisdiction, relevancy.

JUDGE GRAHAM: Now, let's see how

- PAGE 76 -

unbiased and prejudiced the Commission is. I've got people from the community who have watched these proceedings. I would like to proffer their testimony. They have watched these Commissioners read newspapers, laugh, giggle, talk amongst each other. This woman, bless her heart, goes to sleep. I'm not trying to embarrass her, but she can't stay awake. We've got one guy over here who sits here and -- Mr. Reiter, I've got people from that audience, citizens of this state who have no axe to grind or no grudge, who are willing to come in and testify that he's over here going (gesturing), "Cut him off," and (gesturing) like this to you.

Now, I don't know whether you've seen that or not, but there's people in that audience that have seen it. And that's

improper, and that goes to my argument that this Commission, after bringing these silly, trivial charges against me and refusing to listen to me at a 6B hearing, has got itself in a position where you've got to find me guilty. You've got to.

* * *

- PAGE 48 -

* * *

THE CHAIRMAN: Go ahead.

JUDGE GRAHAM: Can I see what Mr. Rhodes has given --

THE CHAIRMAN: No, you cannot. Please proceed.

JUDGE GRAHAM: Let the record reflect that Mr. Rhodes has given notations to the Chairman.

* * *

DOCUMENT 5

Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings

- PAGE 109 -

* * *

THE CHAIRMAN: Judge, your 30 minutes are used up. Would you please conclude your remarks now.

JUDGE GRAHAM: Mr. Commissioner, we are talking about -- I've got four college degrees -- engineering, master's in Business Administration, two law degrees -- ten years as an attorney. A whole lifetime is at stake. And what you're doing right now is completely consistent with the Commission's entire pattern and practice as it applies to me as a litigant. I am here fighting not just for an entire career; thousands of hours of effort, 30,000 people that I personally shook hands

- PAGE 110 -

with, four elections. Okay?

I have paid the price standing up for the independence and integrity of the judiciary, and this Commission and Mr. Bostic is trying to ruin that career, destroy that effort, and more importantly, take away from the people of this county their democratic right to elect the judges they want, and you don't want to give me more

than 30 minutes to make an opening statement on 41 charges of misconduct? That is indefensible, Mr. Chairman.

THE CHAIRMAN: Judge, we'll give you another five minutes.

* * *

- PAGE 117 -

THE CHAIRMAN: Judge, I've given you now 40 minutes. Will you please wrap up your closing.

JUDGE GRAHAM: I'm not -- I haven't even begun.

THE CHAIRMAN: All right. Then I am going to adjourn the Commission. I apologize. I told you the time. There was no objection to it when we set it. I gave you 40 minutes. If you don't want to conclude -- the Commission is now going to go into luncheon recess.

It is now 12 -- say 12:05. We will resume in one hour, at 1:05.

Thank you very much.

(Recess from 12:05 p.m. to 1:08 p.m.)

THE CHAIRMAN: Good afternoon, Mr. Bostic, Judge Graham. The Commission is back. It's now about -- according to that clock -- 1:10, and we're ready to present evidence.

* * *

- PAGE 155 -

* * *

THE CHAIRMAN: You can certainly look at it, Judge, but we are not going to sit here for three, four, five minutes while you calmly go through each and every item in those documents and look at them when this should have been done before. And that was in my pretrial order for you people to look at your exhibits, and it was not done, apparently.

JUDGE GRAHAM: Excuse me. I think I should address that pretrial order. I think it was called "In Re Order" -- "In Re" --

MR. BOSTIC: Order In Re: Trial.

JUDGE GRAHAM: Order In Re: Trial. This was an order received without -- no one moved for this order. This order was made, I can only presume or understand, sua sponte by the Chairman or whoever signed it. And I received

- PAGE 156 -

it in the middle of an extremely busy deposition docket where I'm trying to discover the facts of this case, and I have had no opportunity whatsoever -- no ability to comply with that order.

And then to bootstrap that and say, "Okay. Because you couldn't comply with an order that we threw on you three or four days before trial when you were in the middle of 14-hour-a-day depositions trying to discover the facts of the case, we're not even going to allow you to look at the documents before we introduce them into evidence," is an error of law and a denial of my fundamental rights protected by both the federal and the state constitution.

* * *

- PAGE 310 -

* * *

COMMISSIONER KANEY: How many pages is this document?

MR. BOSTIC: It's approximately 20 pages, I think.

COMMISSIONER KANEY: Just so we know if

- PAGE 311 -

we've got another 20 minutes or so.

* * *

- PAGE 312 -

* * *

THE CHAIRMAN: Judge, I am waiting for your objections to that exhibit. We have now been waiting about eight minutes while you've been reading it, so --

* * *

- PAGE 396 -

* * *

THE CHAIRMAN: I understand that, Judge, but we -- I want the record to reflect that on the last series of questions, you went over there and stood about three or four minutes while you were reviewing it. So let's please proceed.

* * *

- PAGE 546 -

* * *

JUDGE GRAHAM: I would like to argue the materiality and relevancy.

THE CHAIRMAN: I've heard the question. I've ruled on it. Please proceed.

Judge Graham, it has been four minutes since your last question. I would ask you to proceed.

JUDGE GRAHAM: I will state for the record that the only reason it has been four minutes since my last question is because the Commission has consistently refused ::

THE CHAIRMAN: Judge, there is no necessity for argument. There is no legal motion before the Commission. Please proceed.

JUDGE GRAHAM: Mr. Commissioner, you do not have to ask me to proceed. I will proceed at all possible haste throughout these

- PAGE 547 -

proceedings.

THE CHAIRMAN: Judge, I'm going to give you one more minute to ask a question; otherwise, I will presume you have finished your cross-examination.

* * *

- PAGE 529 -

* * *

Judge, I am not going to have the Commission sit here and watch you read that exhibit. I've told you to be prepared. Now,

- PAGE 530 -

are we going to wait another five minutes until you decide to ask another question?

JUDGE GRAHAM: Mr. Chairman, you told me to be prepared. I have begged for the opportunity to be prepared, and you've denied it.

THE CHAIRMAN: Judge, there is no doubt in my mind that you are intentionally delaying this trial, and I'm asking you to proceed forward.

JUDGE GRAHAM: Yes, Mr. Chairman.

* * *

- PAGE 551 -

* * *

THE CHAIRMAN: Judge Graham, it has now been three and a half minutes since you asked your last question, and there is no doubt in my mind that you are intentionally delaying this trial, and I'm going to ask you to move on, please.

* * *

- PAGE 558 -

* * *

THE CHAIRMAN: The Chair has now seen a large file box with numerous documents that have not been marked as I have requested. I am not going to allow any more testimony in reference to those documents. You can proffer them after. I had asked you on several times to mark these beforehand. You have dragged your feet, taken one document at a time, going back and forth, consuming the Court's time at three to five minutes on each question; and I'm not going to allow that.

You are violating the provisions of the Florida Statute 90.612, and I'm going to ask you to continue on on any other subject matter but those documents.

JUDGE GRAHAM: I would like to --

THE CHAIRMAN: You may proffer those documents subsequent to the testimony that's going to be presented by this witness.

JUDGE GRAHAM: I would like to respond.

THE CHAIRMAN: No.

JUDGE GRAHAM: I would like to make an objection.

THE CHAIRMAN: What legal objection are you making?

JUDGE GRAHAM: I would like to make a motion for a mistrial --

THE CHAIRMAN: Motion denied.

JUDGE GRAHAM: -- and I would like to state the basis for it.

THE CHAIRMAN: Motion denied. . . .

- PAGE 581 -

* * *

JUDGE GRAHAM: The papers fell off here.

COMMISSIONER KANEY: Mr. Chairman, may I suggest that -- rather than have us sit here while he fumbles through papers, that we pull Mr. King off the stand, bring in Judge Swigert, get his in and off, and then put Mr. King back on perhaps tomorrow, if necessary. But it appears to me that it's --

THE CHAIRMAN: I was thinking of doing that, but I wanted to see if we could finish with Mr. King out of deference to his time schedule.

* * *

- PAGE 623 -

* * *

JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue. The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

haven't even --

JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute. I am not going to delay the trial anymore for you to go digging around, like you've been doing, looking at the same documents, telling us that you need more time to find documents. Either you're going to ask questions now or else this witness will stand down.

- PAGE 625 -

JUDGE GRAHAM: Yes, I'll ask a question.

* * *

- PAGE 642 -

* * *

THE CHAIRMAN: That is now three minutes,

- PAGE 643 -

Judge, since I've asked you to proceed. Are you going to proceed?

JUDGE GRAHAM: Yes, I am. I was looking for the document with respect to the jail release committee. I can't find it in the time of three minutes given to me by the Commission within the framework of this 41-count charge going back five years.

THE CHAIRMAN: Do you have any further questions?

JUDGE GRAHAM: Yes, I do.

* * *

- PAGE 649 -

* * *

MR. BOSTIC: We are moving at a pace that's much slower than I anticipated. I have said in my motions to dismiss that I believe that the matters here are of great importance and should be resolved without delay.

* * *

* * *

JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. And I object on due process grounds that this violates my fundamental right to due process and a fundamentally fair procedure where I am put under this type of an ordeal from nine in the morning until 7 o'clock at night with a 20-minute lunch break. And the statements of the Chair that I had other times to relax is not true. At all other times I was scurrying around trying to respond to implicit threats to put me in jail today.

Mr. Chairman, I have much more to get into with this individual. After ten hours -- more than ten hours -- and without being allowed to prepare and without being allowed to get my deposition from this individual, I can't proceed. It's physically and procedurally impossible for me to proceed at this time.

THE CHAIRMAN: So noted. Judge, you are

now released to return to your activities. I don't know if you're under subpoena by anyone else.

* * *

- PAGE 676 -

* * *

JUDGE GRAHAM: Sure. Well, let me just finish one thought.

THE CHAIRMAN: I'll give you two minutes. Okay?

JUDGE GRAHAM: Two minutes. Okay.

Look. There's an item of relevancy that you're not allowing me to argue. . . .

* * *

- PAGE 701 -

* * *

JUDGE GRAHAM: May I ask permission to note for the record that I do not have a continuing objection; that these are each individual objections?

THE CHAIRMAN: No. I am not going to delay the trial. You can make your motion at a later time. We are proceeding with the cross-examination of this witness. Please proceed.

* * *

- PAGE 718 -

* * *

JUDGE GRAHAM: Okay. If you'll remind me.

I would like to -- permission to make a statement on the record that if I had been allowed to make an opening statement, this would already be obvious; but I was cut short and not allowed to make a statement that I would have made then if I had been given the time. Permission to --

THE CHAIRMAN: Judge, we are in the matter of where you're going on cross-examination. Please continue. What is the purpose of the line of questioning that you are now pursuing?

JUDGE GRAHAM: If I could find the formal charge -- have a moment to find the formal charge among the 41 counts.

THE CHAIRMAN: You are once again delaying this trial, and I warn you, I am not going to put up with delays. Please go forward.

JUDGE GRAHAM: I'm looking for it. As soon as I find it among these 41 counts, I'll begin.

- PAGE 810 -

* * *

And I will point out for the record that at one point you were timing me. You were timing me. You were saying, "You took three minutes to write that note." That was with respect to, I believe -- I'm not certain -- item four.

* * *

- 853 -

* * *

JUDGE GRAHAM: I did not stipulate to its relevancy; and before proffering it to the Commission, I would request the opportunity to view it first.

THE CHAIRMAN: Well, I'm not going to delay the proceedings anymore. It's been entered into evidence, and I'm going to allow it to be shown for the weight to be given by the Commissioners as they want. I'm coming down.

- PAGE 853 -

* * *

JUDGE GRAHAM: I did not stipulate to its relevancy; and before proffering it to the Commission, I would request the opportunity to view it first.

THE CHAIRMAN: Well, I'm not going to delay the proceedings anymore. It's been entered into evidence, and I'm going to allow it to be shown for the weight to be given by the Commissioners as they want. I'm coming down.

- PAGE 715 -

* * *

MR. BOSTIC: Your Honor --

A -- he would have, yes, sir.

MR. BOSTIC: Mr. Chairman, I'm going to object on relevancy. If Judge Graham has a point, then he needs to get to it. It's been approximately 35 minutes, and we aren't even beyond the three or four simple characteristics of this file.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No. The objection is overruled, but, Judge Graham, I will ask you to proceed.

JUDGE GRAHAM: May I proffer a statement for the record?

THE CHAIRMAN: At a later time. Please continue with your cross-examination of the witness.

* * *

- PAGE 801 -

* * *

There was a statement made by Mr. Bostic complaining that it took 35 minutes to get the answers to five questions. And I had wanted to respond to that by saying that the reason was not because of the questions; the reason was because of the evasiveness of the witness. I just wanted to make that point for the record.

* * *

- PAGE 726 -

* * *

JUDGE GRAHAM: Permission to look through my files. I have a transcript of that proceeding.

THE CHAIRMAN: Please hurry, Judge. You're delaying the trial. I would appreciate it if you would have your documents ready. Please continue and get your documents. You need to make no comment. I'm giving you time to get the records, so please do it.

* * *

- PAGE 812 -

* * *

JUDGE GRAHAM: I cannot do it in five minutes. I make a further objection on the basis of due process of law.

THE CHAIRMAN: Well, I'm going to give you five more minutes, and then we can do it later on.

JUDGE GRAHAM: Later on -- I will be unable to do it after another six hours of these proceedings, and I will have lost my arguments. . . .

* * *

- PAGE 832 -

* * *

THE CHAIRMAN: You do not have to make

- PAGE 833 -

explanations. Please move. This particular question now has taken three minutes. Let's move along.

* * *

- PAGE 846 -

patiently waiting for you to ask your next question, and I am now going to suggest to you that I am going to finish the cross-examination unless you move along with the proper procedure, asking questions, and quit delaying in this courtroom.

Now, I want to get this witness done, and I have already ruled that you cannot go into anything on the impeachment or bias because you've covered that ad nauseam. You cannot go into areas of bias -- I'm sorry; undue influence -- except for one more matter. You have already dealt with two of them.

So unless you limit your questions in that area, we are going to conclude the cross-examination of him pursuant to my ability under 90.612. And then if you have any proffers, you will make the proffers with Mr. King. And, Mr. King, I'm going to ask you to return later in the day, because we are going to continue with taking testimony here.

JUDGE GRAHAM: May I confer with co-counsel?

THE CHAIRMAN: Yes, sir.

(Discussion off the record.)

- PAGE 1473 -

* * *

. . . We are starting today, and we are going to complete this hearing by Friday. . . .

* * *

- PAGE 1542 -

* * *

A No, sir.

Q As a result of these conversations, did you take actions to have me removed from the felony docket?

A Yes, sir.

Q At any time did you make any attempt to discover the purpose of the closed meeting?

A No, sir.

THE CHAIRMAN: Judge, I am not going to allow to you take three to four minutes in

- PAGE 1543 -

between questions again. If you do not ask a question, I'm going to relieve -- I'm going to allow this witness to stand down. So please proceed. All right?

JUDGE GRAHAM: Mr. Reiter, the only reason it takes me so long is because I have to sift through the things that may have been disallowed by the Chair, and I do not want to ask a question that the Chair has ruled I cannot ask.

* * *

- PAGE 1663 -

* * *

JUDGE GRAHAM: I have located the exhibit number that he was shown during the deposition. The court reporter may be able to help me locate that to the document number.

THE CHAIRMAN: Well, Judge, we have been waiting three and a half minutes, nearly four minutes, for you to find this. I'm going to wait 30 more seconds. If you don't find it, we're going to move on, Judge.

JUDGE GRAHAM: I'll recall him tomorrow morning.

THE CHAIRMAN: No, you're not.

* * *

- PAGE 1665 -

* * *

JUDGE GRAHAM: Mr. Reiter, with all due respect, if I had been given the time to prepare for this case, I would be able --

THE CHAIRMAN: I'm asking you to move along.

JUDGE GRAHAM: I'm trying my best.

THE CHAIRMAN: Now, if you don't find that, then ask him another question. You can proffer the question later on.

JUDGE GRAHAM: I am going to look for the answer until the Chair instructs me to sit down, if that's suitable to the Chair.

* * *

- PAGE 1672 -

THE CHAIRMAN: Okay, Judge. Judge, when you say you have one last witness, don't anticipate this Commission looking at a tape for three hours. I'm going to tell you that now. And I don't know how long we may look at the tape. And if we're not -- and we finish within a -- before 5 or 6 o'clock, I suggest strongly that you have other witnesses to go. All right?

JUDGE GRAHAM: Mr. --

THE CHAIRMAN: Because we're going to finish this by Friday.

* * *

- PAGE 1683 -

* * *

JUDGE GRAHAM: May I have a brief recess to get my own court reporter in here to do it?

THE CHAIRMAN: Well, I'm not going to delay --

* * *

- PAGE 1798 -

* * *

JUDGE GRAHAM: I believe about 50 more minutes.

COMMISSIONER TATE: Five 0?

JUDGE GRAHAM: Five O. It's only 4:30. The Commission kept me here until 7:30.

THE CHAIRMAN: Judge, that is -- Judge, we're going to watch a little bit more of the next tape, maybe ten or fifteen minutes, and then we're probably going to break.

JUDGE GRAHAM: And then come back and listen to the rest of it?

THE CHAIRMAN: I don't know.

JUDGE GRAHAM: I just stress to you, this is the actual public response to this type of activity. This is not the type of thing --

THE CHAIRMAN: Judge, I understand that. Just -- please. We're taking evidence now and not closing argument.

* * *

- PAGE 1877 -

you understand what I'm saying? I'll find those as material and as issues that should be presented to the Commission if you knew of them and if your comments during the particular allegation occurred based upon your knowledge of these alleged driving violations corrections that were done by someone.

JUDGE GRAHAM: I would just proffer them. I believe it's Mr. Bostic's burden to prove I didn't know about them, not mine to prove I did. I do not have to prove anything. He has got to carry the burden of the case, and he hasn't done it.

THE CHAIRMAN: Well, Judge, we have gone past the allegation where he has presented evidence -- at least a sufficient amount of evidence to get past a motion to dismiss on it. Whether you want to present evidence on it is up to you. But if you are presenting evidence, you have to show that it's related to your defense. And unless you knew of those violations and that was the basis of your opinions, then I can't let them in. That's what the facts are, Judge.

JUDGE GRAHAM: Mr. Reiter, I formed an

COMMISSIONER KANEY: Mr. Chairman, it's now been at least two minutes since --

THE CHAIRMAN: Let's go, Judge.

COMMISSIONER KANEY: -- and I was wondering if we could at least know who the next witness is so we could have them come forward.

THE CHAIRMAN: Who is your next witness, Judge?

JUDGE GRAHAM: Mr. Chairman, I apologize --

THE CHAIRMAN: Judge, don't take issue with me.

* * *

- PAGE 2262 -

JUDGE GRAHAM: I understand. Do you realize that that is approximately only four minutes per charge?

THE CHAIRMAN: Well, we know what it is, and we --

COMMISSIONER GILLMAN: 5.76.

THE CHAIRMAN: Judge, that is a -- we feel that the totality of the time, two and a half hours, is more than reasonable for you to make your closing statement.

* * *

- PAGE 2610 -

* * *

THE CHAIRMAN: Thank you very much, Rollie. I appreciate the help.

All right. What I'm going to do -- now, listen to me. The law is very clear that surrebuttal is really -- there is no such thing. However, in light of the fact that there was -- in this one area that you talked about, in the area where you were supposed to have been rude and she was all upset about it -- only as to those areas will those deputies testify, and I expect you to do it in a very, very short time.

* * *

- PAGE 2661 -

COMMISSIONER DEMERS: Can we take a short recess, please?

THE CHAIRMAN: For the purpose of my ruling?

COMMISSIONER DEMERS: Yes, sir.

THE CHAIRMAN: No. I'm not going to change my ruling. Let's do this quickly, Judge. Let's bring the person in.

* * *

DOCUMENT 6

Excerpts from the Record Where Proffers Were Denied

notice at all. Is that what you're --

JUDGE GRAHAM: I had no notice. The first notice I had that we were going to be arguing this motion to dismiss was when the Commission -- Mr. Bostic announced it some five minutes ago.

THE CHAIRMAN: All right. That is proper grounds for argument, and if you are not prepared to argue the motion in limine, I will not allow that to be argued; but I will deal with the materiality and relevancy of witnesses to be called and issues to be raised by these witnesses. So why don't we go to those issues.

JUDGE GRAHAM: Now, may I finish my response to your statements?

THE CHAIRMAN: I've already ruled on that, Judge.

JUDGE GRAHAM: I understand.

THE CHAIRMAN: Let's move on to -- what I want to talk about is the necessity of the witnesses and any evidence that is going to be presented by you or Mr. Bostic.

JUDGE GRAHAM: Okay. Point of clarification.

THE CHAIRMAN: Go ahead.

JUDGE GRAHAM: May I respond to your statements about the Commission not having the jurisdiction so that I can preserve it?

THE CHAIRMAN: No, you may not. No, you may not. Because you have already said --

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: -- that is not an issue to be resolved.

JUDGE GRAHAM: I just want to preserve it for the record at this point so the federal courts would know it.

THE CHAIRMAN: Well, I've made my statements. Let's move on.

JUDGE GRAHAM: Thank you, Mr. Chairman.

MR. BOSTIC: Well, Mr. Chairman, in response to Judge Graham's comments -- first of all, the Chair did not tell me what affirmative defenses to strike. The four affirmative defenses mentioned by the Chair were the four affirmative defenses that I addressed in my motion. With respect to not being noticed for this motion in limine, the order that was entered by the Commission

stated that I was to make -- that he was -- that Judge Graham was to provide a witness list and an exhibit list, and

- PRETRIAL CONFERENCE PAGE 29 -

I was to make objections.

- PAGE 49 -

JUDGE GRAHAM: Yes. I would make a motion to renew my -- actually, I would make a motion for a hearing -- not a rehearing but a hearing -- on my motion for a pretrial conference, and I would like to argue the merits of having a hearing on it.

THE CHAIRMAN: There's no necessity for argument. The motion is denied for a pretrial hearing at this time.

JUDGE GRAHAM: At this time, I would cite to the Commission the opinion of --

THE CHAIRMAN: Judge, is this in reference to my ruling just now?

JUDGE GRAHAM: Yes. I would like to state an objection --

THE CHAIRMAN: I will not take any further comment on that, Judge. Please proceed.

JUDGE GRAHAM: I would like to -- may I preserve my record on appeal?

THE CHAIRMAN: You can make your proffer

at a time later, when the Commission is not here. I have ruled on that. There is not going to be any further argument. Please proceed.

JUDGE GRAHAM: All right. I don't understand, because -- this is so unusual that I don't understand it. I think I am being told that I cannot establish a record on appeal by citing the case that says you must listen to my arguments.

THE CHAIRMAN: Please proceed, Judge. Do you have anything else to present to the Commission before I have opening statements made?

JUDGE GRAHAM: Yes. I would like a motion to -- for a rehearing on my second amended motion to dismiss. The basis for this is as follows --

THE CHAIRMAN: Judge, that is out of order at this time.

JUDGE GRAHAM: Excuse me, but I --

THE CHAIRMAN: It is out of order at this time, and I will not take an argument on that.

JUDGE GRAHAM: Let the record reflect that my second amended motion to dismiss has

- PAGE 51 -

never been noticed or heard -- that is a speaking motion -- that the Commission did not allow me to call witnesses to prove the factual basis of the motion; and that counsel for the JQC filed a response to the motion stating that it contained false allegations; and that the appellate court, on appeal, are going to be in a quandary, because -- with issues of fact left unresolved, there is more than just a issue of law to be decided by the Commission with respect to this complicated, 58-page motion to dismiss.

THE CHAIRMAN: Judge Graham, I have ruled on that. I'll ask you to proceed, please.

JUDGE GRAHAM: I'm stating this for the record.

THE CHAIRMAN: You have stated your point. I want you to proceed. You've made your point clear. Please proceed with any other matter you want to bring before we begin opening statements.

JUDGE GRAHAM: Is it my understanding that I cannot state Robert -- Charles versus State of Florida?

THE CHAIRMAN: I have ruled on the

- PAGE 52 -

matter, Judge. Please proceed.

* * *

- PAGE 71 -

* * *

JUDGE GRAHAM: My objection is -- and I move for a mistrial. Mr. Bostic has alleged conduct during these proceedings. Nothing in the formal charges nor in the consolidated notice of formal charges, an amendment to

- PAGE 73 -

notice of formal charges, has put me on notice or charged me with any conduct.

THE CHAIRMAN: The motion is denied. The motion for a mistrial is denied.

Please continue, Mr. Bostic.

JUDGE GRAHAM: Let the record reflect I was not allowed to finish my argument.

* * *

- PAGE 122 -

* * *

JUDGE GRAHAM: I accept the ruling but would now ask to proffer my opening statement for the purposes -- excuse me. Let the record reflect that this individual, Mr. Kaney, is over there again shaking his head no. I would ask to --

THE CHAIRMAN: If you decide to proffer, you may proffer during one of the breaks or after we break tonight; but I will not have you proffer at this time.

JUDGE GRAHAM: It is unfair to make me proffer during the break or after the proceeding is over, because then my opponents are getting rested. They're able to work on their case while I'm sitting here making

- PAGE 123 -

proffers to an empty room.

THE CHAIRMAN: All right. I've made --

JUDGE GRAHAM: I object to that.

THE CHAIRMAN: -- my ruling, Judge. I understand. I made my ruling. Please proceed with the presentation of your evidence.

* * *

- PAGE 175 -

* * *

THE CHAIRMAN: Your request is denied.

JUDGE GRAHAM: I object. It's the equivalent of a judge asking opposing --

- PAGE 176 -

THE CHAIRMAN: Judge, I am not going to take any more argument on this issue. Are you going to respond to my notice of taking judicial notice --

JUDGE GRAHAM: Yes.

* * *

- PAGE 237 -

* * *

THE CHAIRMAN: I've cited to you the statute that says, "Avoid needless consumption of time," which I believe that you're doing in the cross-examination of these exhibits.

JUDGE GRAHAM: And you would not let me respond to that.

THE CHAIRMAN: I am not going to spend any more time on this issue.

JUDGE GRAHAM: You have not let me

- PAGE 238 -

respond to that argument yet.

THE CHAIRMAN: You have made your objection.

Now, let's go to Mr. Bostic's motion for entrance of the exhibits that were not presented.

JUDGE GRAHAM: May I proffer the argument?

THE CHAIRMAN: No, you may not at this time, because I have Mr. Bostic's motion to offer into evidence certain exhibits.

* * *

- PAGE 287 -

* * *

JUDGE GRAHAM: I would -- may I proffer the proceedings which would have proved that there have been ex parte motions heard and --

THE CHAIRMAN: Not at this time. You can proffer it at the close of the evidence today.

* * *

- PAGE 291 -

* * *

JUDGE GRAHAM: Excuse me, Mr. Chairman. There has been an error.

THE CHAIRMAN: What is the error?

JUDGE GRAHAM: The error is that you asked me to wait until the end of Mr. Polak's testimony to perfect my due process arguments with respect to being -- having motions heard without notice to the respondent judge.

THE CHAIRMAN: I will allow you to proffer that at the conclusion of all proceedings. Thank you, Judge.

Mr. Bostic.

* * *

- PRETRIAL CONFERENCE PAGE 297 -

JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

All right. The first thing is that, you know, we will proceed next Tuesday here at 9 o'clock in this courtroom to complete the proceedings, and the proceedings are designated to be completed by Friday.

Secondly, the Motion Committee has reviewed all the pleadings that are in the file, obviously, and have reviewed the motion in limine. And the motion in limine is going to be granted in part in that the Commission will not adjudicate the issue of

constitutionality of the Code of Judicial Conduct or the constitutionality of this Commission. This Commission will not adjudicate selective enforcement --

JUDGE GRAHAM: Mr. Reiter, I can't write that fast. If I could --

THE CHAIRMAN: All right. Go ahead.

JUDGE GRAHAM: Code of conduct. Also of the Commission itself --

THE CHAIRMAN: Yes.

JUDGE GRAHAM: -- or selective prosecution. Okay. Thank you, sir.

* * *

- PAGE 410 -

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned. The affidavit is what we travel on. I'm going to adjourn for one minute for a vote on this, and I'll announce my vote on it. We will do it in executive session. Please step out for one second.

* * *

- PAGE 502 -

* * *

JUDGE GRAHAM: I would like to make a record at this point that this is where --

THE CHAIRMAN: There is no further argument on that issue.

JUDGE GRAHAM: I'm not making argument. I would --

THE CHAIRMAN: Judge, please continue with the cross-examination.

JUDGE GRAHAM: Are you ordering me not to make a statement on the record to preserve a due process --

THE CHAIRMAN: You've made your objection. I've ruled on it. You may proceed.

JUDGE GRAHAM: Do I understand that I may not mention the federal courts?

THE CHAIRMAN: Judge, I've already ruled on it.

* * *

- PAGE 525 -

* * *

MR. BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Objection is sustained.

JUDGE GRAHAM: May I proffer the relevancy?

THE CHAIRMAN: Not now. You can proffer it after all of the testimony has been given. Mr. King, you will have to stand and take a proffer.

THE WITNESS: Yes, sir.

* * *

- 527 -

* * *

JUDGE GRAHAM: Your Honor, if we're talking about 6 o'clock tonight -- I will not be able to continue after 6 o'clock at night. I've been going from six -- from nine in the morning to 6 o'clock yesterday constantly in hearings; I've been going constantly today from 9 o'clock. The Chair --

THE CHAIRMAN: I will have no further argument on that. I have ruled.

* * *

- PAGE 542 -

* * *

THE CHAIRMAN: The Chair is going to use its discretion under 90.612 and indicate that I will not allow this questioning.

This is far afield. It does not go to the issues of credibility, and I'm going to ask you to move on, Judge.

JUDGE GRAHAM: I --

THE CHAIRMAN: You can proffer it at the close of all the evidence. Please move on.

* * *

- PAGE 556 -

JUDGE GRAHAM: Yes. I would like to proffer the relevancy.

THE CHAIRMAN: Let me see the document.

JUDGE GRAHAM: And I will state for you the relevancy of not knowing --

THE CHAIRMAN: I don't need for you to proffer it right now.

* * *

- PAGE 558 -

* * *

JUDGE GRAHAM: I would like to --

THE CHAIRMAN: You may proffer those documents subsequent to the testimony that's going to be presented by this witness.

JUDGE GRAHAM: I would like to respond.

- PAGE 559 -

THE CHAIRMAN: No.

* * *

- PAGE 562 -

* * *

JUDGE GRAHAM: Request a proffer.

THE CHAIRMAN: You will proffer at such time as we finish this witness, in the direct presentation of evidence and outside the presence of the Commission.

- PAGE 575 -

THE CHAIRMAN: Objection sustained.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: You may proffer at such time as you proffer the other items.

JUDGE GRAHAM: I can't. This rule that I've got to proffer everything, the other items, after being at a hearing all day, from

9 o'clock until 5:30 with a 20-minute break, is completely unworkable. I do not have a computer for a mind. There's no way I can remember all these proffers that you're requiring me to make at the end of the day.

* * *

- PAGE 596 -

* * *

THE CHAIRMAN: I have ruled on that motion. Please continue, Judge.

JUDGE GRAHAM: I'm trying to point out something for the record for appeal.

THE CHAIRMAN: Judge, I have ruled on that motion. Please continue.

JUDGE GRAHAM: I understand that. I'm not asking you to rerule on it. I'm trying to make --

THE CHAIRMAN: Well, then I do not want gratuitous remarks to the bench. Please continue your cross-examination of the witness.

JUDGE GRAHAM: I'm trying to point out the prejudice, Mr. Chairman, which will be unavailable to the appellate courts now, because you won't let me do it.

* * *

- PAGE 615 -

* * *

THE CHAIRMAN: Excuse me, Judge. Are you asking a question or are you --

JUDGE GRAHAM: I am proffering what this would show; not just bias and credibility --

THE CHAIRMAN: I will have no further argument on it, Judge. Please continue your cross-examination.

JUDGE GRAHAM: It's my understanding the Chair doesn't want to hear testimony to prove the workings of the attorneys and the newspapers toward my problems. Is that the understanding I have? I am not allowed --

THE CHAIRMAN: The Chair will not comment to that. I am not under direct or

- PAGE 616 -

cross-examination. The Chair requests you to perform your function, to do your cross-examination, and to comply with the rules of properly presenting evidence and making proper objections.

JUDGE GRAHAM: Can I just state --

THE CHAIRMAN: I will request that you continue your cross-examination and do not debate with the Chair.

JUDGE GRAHAM: I will not debate. May I state which affirmative defense it applies to?

THE CHAIRMAN: No. Please continue.

* * *

- PAGE 624 -

* * *

JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on

appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute. . . .

* * *

- PAGE 635 -

* * *

JUDGE GRAHAM: May I proffer its importance?

THE CHAIRMAN: You can proffer it later on.

JUDGE GRAHAM: I'll need to make a note.

THE CHAIRMAN: Judge, please proceed, because the witness will stand down. I am not going to be delayed any further with you walking around --

JUDGE GRAHAM: I just need --

THE CHAIRMAN: -- and writing things down.

JUDGE GRAHAM: You're making this huge list of things that I have to proffer at the end of the case, and I do not have --

THE CHAIRMAN: You have two people sitting back there. Why don't you have them assist you? I thought --

JUDGE GRAHAM: That's exactly what I was doing, Mr. Chairman.

THE CHAIRMAN: Well, why don't you give them a pen and let them write it down, please.

Judge, I am not going to wait for you to write now.

- PAGE 647 -

* * *

JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: No. You can proffer at a later time when the testimony is completed.

JUDGE GRAHAM: May I stop to make a note of the proffer so that I --

THE CHAIRMAN: No. You must continue, please.

* * *

- PAGE 677 -

* * *

But when I try to show the horrible things that these people do, I would hope you would think mitigation. Okay?

THE CHAIRMAN: Judge, I have to now stop the proceedings. I just cannot keep this court reporter going or the court -- Madame Clerk, who I've had here since 9 o'clock; and the bailiffs are ready to go, too. And frankly, I've got to drive back to Ocala, so I am going to end the proffer at this time and ask that everybody be back here at 9 o'clock.

* * *

- PAGE 701 -

JUDGE GRAHAM: May I ask permission to finish my federal due process objection?

THE CHAIRMAN: I have ruled on that. You are pushing me, Judge Graham, and I am getting ready to hold you in contempt, and I'm not going to warn you again. And if that's the case, I'm going to recommend incarceration for your activities of disdain for this Chair, and it is not going to happen anymore. You will orderly proceed with the cross-examination of this witness. Now, please proceed.

JUDGE GRAHAM: May I ask --

THE CHAIRMAN: Do not argue with me. Please proceed.

- PAGE 715 -

* * *

JUDGE GRAHAM: May I proffer a statement for the record?

THE CHAIRMAN: At a later time. Please continue with your cross-examination of the witness.

* * *

- PAGE 727 -

* * *

BY JUDGE GRAHAM:

Q You stated that --

JUDGE GRAHAM: May I make a due process objection, Your Honor -- excuse me -- Mr. Chairman?

THE CHAIRMAN: No. Not at this time. You may make an argument at a subsequent time.

I'm getting ready to dismiss this witness, Judge Graham. Are you finished?

JUDGE GRAHAM: I was just making a note so I would be able to make my proffer.

THE CHAIRMAN: I am now finding you once again in contempt of this Commission.

* * *

- PAGE 747 -

* * *

MR. BOSTIC: Objection. Relevancy. Beyond the scope.

THE CHAIRMAN: Sustained. You may proffer at a later time.

Apparently there are no further questions of the witness.

JUDGE GRAHAM: I have further questions.

THE CHAIRMAN: Well, you have stopped, and you're writing. Do you have further questions?

JUDGE GRAHAM: Yes, I do. I need permission to write down the proffer that has been delayed so that I won't forget it.

THE CHAIRMAN: I'm not going to delay the trial.

JUDGE GRAHAM: Will you not allow me --

THE CHAIRMAN: If you have any other questions of the witness, ask him now.

JUDGE GRAHAM: Permission to make as short a note as possible?

- PAGE 748 -

THE CHAIRMAN: No. I am not delaying this trial. Do you have any other questions?

JUDGE GRAHAM: Yes, I do.

* * *

- PAGE 751 -

* * *

JUDGE GRAHAM: May I proffer what I would have --

THE CHAIRMAN: No. You may proffer at a later time, as I've ruled on the other matters.

Apparently you're finished asking questions.

JUDGE GRAHAM: No, I am not.

THE CHAIRMAN: Well, if you continue to delay the trial, I'm going to have the witness stand down. Please continue, Judge.

* * *

- PAGE 753 -

* * *

JUDGE GRAHAM: May I proffer the --

THE CHAIRMAN: You may proffer all those questions at a later time, as I've previously ruled.

JUDGE GRAHAM: May I have time to make a note about it?

THE CHAIRMAN: Please continue.

JUDGE GRAHAM: Is that a yes or no?

- PAGE 754 -

THE CHAIRMAN: You have two assistants there. Let them make your notes, please. Are they not capable of helping you?

JUDGE GRAHAM: They are not capable of this type of legal notation.

THE CHAIRMAN: Make your note.

Judge Graham, we're way past the note. You're writing a book there. What are you --

JUDGE GRAHAM: I'll let you read it, Mr. Chairman.

* * *

- PAGE 763 -

* * *

THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: May I proffer a response?

THE CHAIRMAN: At a later time, Judge.

JUDGE GRAHAM: Permission to just state federal due process on the record?

THE CHAIRMAN: You may do it later on, Judge.

* * *

- PAGE 767 -

* * *

JUDGE GRAHAM: May I proffer it at the end?

THE CHAIRMAN: Judge, you do not have to ask for a proffer. You may do it at the end of the day.

JUDGE GRAHAM: May I have permission to make a short note?

THE CHAIRMAN: No. You have permission to continue on asking questions.

JUDGE GRAHAM: May I state federal due process as an objection?

THE CHAIRMAN: You may do that at such time as the cross-examination is completed.

- PAGE 768 -

* * *

MR. BOSTIC: Objection. Hearsay.

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No.

JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: At a later time, after you finish cross-examining.

JUDGE GRAHAM: May I express a federal due process objection?

THE CHAIRMAN: At a later time.

- PAGE 769 -

JUDGE GRAHAM: May I make a note of it so that I can remember it?

THE CHAIRMAN: No. Please proceed.

- PAGE 770 -

* * *

JUDGE GRAHAM: May I proffer an objection?

THE CHAIRMAN: You may proffer it at a later time. And from now on, when I make -- sustain an objection, if you want to make a proffer, then make it at the end of the

- PAGE 771 -

presentation of the evidence on cross-examination so as not to delay this trial any further. Please continue.

JUDGE GRAHAM: May I request permission to make a short note so that I will not forget it?

THE CHAIRMAN: Please continue, Judge.

JUDGE GRAHAM: May I make --

THE CHAIRMAN: No. I suggest you move on, because this witness is getting ready to stand down.

* * *

- PAGE 774 -

* * *

THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: Request permission to argue it.

THE CHAIRMAN: Denied.

JUDGE GRAHAM: Request permission to make a short note so that I will not forget to proffer it.

THE CHAIRMAN: Please continue, Judge. I'm not going to delay this trial anymore.

JUDGE GRAHAM: Is that a no?

THE CHAIRMAN: I'm telling you: If you have no further questions, the witness is going to stand down.

- PAGE 780 -

* * *

JUDGE GRAHAM: May I proffer the answer for the record?

THE CHAIRMAN: At a later time.

JUDGE GRAHAM: It will be gone. Am I going to have him answer the question on the

- PAGE 781 -

proffer? Because that's the type of proffer I need.

THE CHAIRMAN: You can make the proffer when you have completed cross-examination.

JUDGE GRAHAM: I can't proffer the answer.

THE CHAIRMAN: You are arguing with me again. I have ruled.

JUDGE GRAHAM: Excuse me, Mr. Chairman.

* * *

- PAGE 808 -

* * *

JUDGE GRAHAM: These are the notes I was taking. Item three here, where I wrote "Need" -- and I started to write the rest of the legal argument that I needed to make, and you cut me off. You would not let me do it.

And this is after telling me -- after charging me with contempt and telling me you were going to ask to put me in jail, you told me that. You said, "I'm charging you with

- PAGE 809 -

contempt. I'm going to ask them to put you in jail." And after telling me that, you wouldn't even let me make a note of a proffer that you wouldn't let me make in the hearing. And now I don't know what it is. I honestly don't know what it is.

* * *

- PAGE 818 -

* * *

JUDGE GRAHAM: I object, Mr. Chairman, to your ruling on the basis of -- may I state it for the record?

THE CHAIRMAN: Your objection is noted.

JUDGE GRAHAM: May I state the reasons for --

- PAGE 819 -

THE CHAIRMAN: No, because I'm allowing this court reporter to go to lunch.

JUDGE GRAHAM: May I proffer the objection?

THE CHAIRMAN: When the court reporter comes back from lunch. Thank you, Mr. McDermott.

* * *

- PAGE 838 -

* * *

JUDGE GRAHAM: Can I just proffer it now and you can make your ruling, or do you want me to go back and --

THE CHAIRMAN: No. If you have to proffer the witness, do it after the questions.

JUDGE GRAHAM: Oh, at the end?

THE CHAIRMAN: Yes.

* * *

- PAGE 919 -

* * *

JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: No. Judge, I'm going to sustain the objection and ask you to ask the question with a little more information, please.

* * *

- PAGE 939 -

* * *

MR. BOSTIC: Charles Dean.

JUDGE GRAHAM: Mr. Chairman, may I proffer the objection of not being allowed my final recross before we start this? It's just a short objection.

THE CHAIRMAN: Not now. You can do it after close, because I have the witness coming forward.

* * *

- PAGE 1027 -

* * *

JUDGE GRAHAM: We had a proffer -- we had some proffers that I was supposed to keep until the end of the proceedings.

THE CHAIRMAN: Please make those proffers.

JUDGE GRAHAM: I can't remember them.

THE CHAIRMAN: I will allow you to make the proffers tomorrow, if you want to take the time to remember them.

* * *

- PAGE 1482 -

* * *

JUDGE GRAHAM: Permission to proffer an objection?

THE CHAIRMAN: No. Not at this time.

JUDGE GRAHAM: A point of clarification. When might I proffer it?

THE CHAIRMAN: We'll proffer it at -- I'll talk to you about it later on.

What I want to go into now is some other -- is there anything else, Mr. King?

MR. KING: No, sir.

* * *

- PAGE 1486 -

* * *

JUDGE GRAHAM: May I voice an objection to that procedure?

THE CHAIRMAN: No. Not now. Let me finish.

- PAGE 1517 -

JUDGE GRAHAM: May I argue the relevancy?

THE CHAIRMAN: No.

JUDGE GRAHAM: May I approach the bench?

THE CHAIRMAN: On what matter, Judge? Is it a proffer? Why is there a necessity for a sidebar?

JUDGE GRAHAM: If you would allow me to explain this, Mr. Chairman, I --

THE CHAIRMAN: No. If you're going to argue on what I've previously ruled -- I'm not going to take any argument or any proffer. Please continue.

JUDGE GRAHAM: Thank you, Mr. Chairman. . . .

* * *

- PAGE 1634 -

* * *

JUDGE GRAHAM: Could I just proffer his answer since he's here?

THE CHAIRMAN: No. As I told you, we're going to follow a certain procedure on that.

* * *

- PAGE 1641 -

* * *

JUDGE GRAHAM: Can he proffer the --

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: Can he proffer the answer so that the appellate courts will know --

THE CHAIRMAN: I cannot go outside the prior rulings. I'm going to stay consistent with them, and it will have to be proffered at a later time.

* * *

- PAGE 1953 -

* * *

JUDGE GRAHAM: I would also like to renew my objection to the fact that the Commission has not allowed me to proffer the evidence which has been ruled inadmissible. The purpose of proffers is not only to assist our appellate courts in their record of -- in preparing a record on appeal, but I am sure the appellate courts require that our trial courts listen to the proffers so that they can make the appropriate decisions.

And I believe that it is yet another example of the prejudgment of my case that the Chair and the Motion Committee and the Commission as a whole has made rulings on these matters of very essential evidence without ever having listened to the proffers of that evidence.

THE CHAIRMAN: The Commission's ruling will stand as made previously.

* * *

- PAGE 2038 -

* * *

JUDGE GRAHAM: May I make a note for the proffer?

THE CHAIRMAN: You can proffer that at later time.

* * *

- PAGE 2130 -

* * *

JUDGE GRAHAM: I would ask permission to note for the record at this time that this is one of the procedural --

THE CHAIRMAN: You do not have to make that note for the record. You have done it several times. My objection stands and -- let's move on, Judge.

* * *

- PAGE 2142 -

* * *

MR. BOSTIC: Objection. Speculation.

THE CHAIRMAN: Well, I'm going to sustain the objection on opinion testimony.

JUDGE GRAHAM: And I would just state for the record that --

THE CHAIRMAN: You don't need to state anything. I've ruled. Please ask your questions.

JUDGE GRAHAM: Can I cite the rule of evidence?

THE CHAIRMAN: No. You may move on, please.

* * *

- PAGE 2190 -

* * *

. . . And I would like to reproffer the question.

- PAGE 2191 -

THE CHAIRMAN: No. I'm not going to allow that. Please continue, Judge.

* * *

- PAGE 2265 -

* * *

JUDGE GRAHAM: At this time I would like to proffer at least one of the two-hour videotapes for the Commission's viewing of what Citrus County Court is really like.

THE CHAIRMAN: I've ruled on that, and

- PAGE 2166 -

we're not going to allow that in.

* * *

- PAGE 2484 -

* * *

JUDGE GRAHAM: Permission to preserve my federal due process objection on the basis --

THE CHAIRMAN: You've done that in the past, and there's no need for further argument.

* * *

- PAGE 2651 -

* * *

MR. BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: The relevancy is -- this

- PAGE 2652 -

is what these --

THE CHAIRMAN: Sustained. I did not ask for argument.

JUDGE GRAHAM: May I proffer the argument?

THE CHAIRMAN: Not now. Are you finished, Judge?

* * *

- PAGE 2679 -

* * *

JUDGE GRAHAM: I want to proffer into evidence all my remaining evidence that wasn't

- PAGE 2680 -

allowed.

* * *

- PAGE 2684 -

* * *

JUDGE GRAHAM: Well, see, here's the trouble with that ruling. Okay? All right? That -- the idea that you don't need to proffer it because -- if the Florida Supreme Court rules that you don't have jurisdiction to hear

affirmative defenses -- which I, quite frankly, find hard to believe they're going to rule that way -- but the assumption that, "Well, if they rule against me on the affirmative defenses, then I don't need to proffer" ignores the fact that -- as I had stated throughout the proceedings, that I fully intend to take this issue to the United States Supreme Court. And the United States Supreme Court has a right to hear what these witnesses would have actually said in determining whether or not these things should have been also accepted in the proffer.

And there's another thing that the Commission, I believe, is overlooking on this. Okay? Proffers are not meant just to allow the appellate courts to determine whether or not the evidence which would have been allowed in was relevant. The proffers are supposed to have been made and accepted by the trial court in an effort for them to make a fair determination based on the actual substance of the evidence -- or testimony -- which was sought to be given.

And, you know, for the trial-level judge, so to speak, the Chairman of the Commission, to

- PAGE 2686 -

say, "Well, I don't want to hear the proffer. You can proffer it for the purpose of appellate reasons, but you can't proffer it to me to decide whether or not it's relevant or not," pre -- you know, evinces a certain prejudice against the person who wants to proffer the evidence.

Mr. Chairman, with all due respect and with all sincerity, I believe if you would have allowed me to proffer these things to you, that many of them you would have said, "Oh, well, now I see the relevancy of that." And I think it's a mistake and I think it's error for the Commission to take the position, "Well, I don't have to hear it. I don't want you to proffer it to me. Just proffer it for the record for the appellate court."

And, of course, I know you've ruled against me, but I want to be clear on the record why I think that's an error.

THE CHAIRMAN: I understand that.

* * *

- PAGE 2690 -

* * *

And I would very much like to put Judge Edwards on to -- you know, I want to tie him down to the fact that he called me up and asked me to let one of his friends off of jury duty. I want to tie down the fact that his secretary did the same thing. I want to tie down the fact that he threatened one of my 15-year-old clients with 60 days in jail to get even with me for, you know --

THE CHAIRMAN: Did you say your client? When you were practicing law?

JUDGE GRAHAM: Yes. That's sort of in. I think I got a newspaper article in that was allowed in, and I may be able to argue that.

But I wanted to get him -- I want to proffer his -- I want to get him back on the witness stand and go through each and every one of the questions I did on the deposition. Now, he refused to answer most of those questions

based on relevancy; and, of course, on a proffer he would not be allowed to refuse to answer those questions on the basis of relevancy. And I just -- I want to get out all the misconduct of Judge Edwards clearly on the record in order to preserve my

selective- prosecution argument to the United States Supreme Court.

THE CHAIRMAN: All right.

JUDGE GRAHAM: Will I be allowed to do that?

THE CHAIRMAN: Well, what I'm going to allow to you do, Judge -- and first I'm going to -- first I'm going to give you the option to do it in writing -- in fact, I'm not going to give you the option. I'm going to have you do it in writing.

And what I want you to do, Judge -- on those witnesses that you want to proffer in the testimony -- like this is the first time I heard what you would be seeking from Judge Edwards. I want you to file a document saying, "These are the following witnesses, who I anticipate would say" A, B, or C. All right? And I know you're going to say that's a lot of

- PAGE 2692 -

work for you.

JUDGE GRAHAM: No. It's not a lot of work. I'll tell you what the problem with that is. Okay?

THE CHAIRMAN: Well, you haven't even let me finish.

JUDGE GRAHAM: Okay. I'm sorry.

THE CHAIRMAN: Once you do that and you file that document as your tendered proffer, I will review the proffer, and I will enter an order as to what -- I mean who -- if any, of the witnesses that we would take live testimony from. And I want you to do that within a short period of time -- a relatively reasonable period of time, because I -- you know, I want to resolve this issue as soon as we can. And I'm wondering if you could do that by next Monday or Tuesday.

JUDGE GRAHAM: Well, here is the -- may I respond?

THE CHAIRMAN: Sure. Go ahead.

JUDGE GRAHAM: Now, here is the problem with that.

THE CHAIRMAN: There is no problem, because I haven't excluded anything. What I'm

trying to do is find out what you want to proffer --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and the general area.

JUDGE GRAHAM: Right. I want to -- just the general area?

THE CHAIRMAN: No. I want you to go into --

JUDGE GRAHAM: Specifics.

THE CHAIRMAN: Well, not great specifics, but if you're going to say that "I expect it would be in this general area and that it" -- you know --

JUDGE GRAHAM: Well, with Judge Edwards, I would say that I expect to go into all of his misconduct. That's what I would go into.

THE CHAIRMAN: Right. But you see, Judge, I've already -- the Commission has already ruled that that particular issue is something that we're not going to address, because that selective-enforcement issue -- the Commission has taken the position that it is not an affirmative defense.

Now, you say you won't have a record to take to whatever appellate court you may want

- PAGE 2694 -

to go through, either the state or the federal court, and all I can say to you is: If the Commission is in error, then they will give us the direction to do the right thing, I would presume.

- PAGE 2720 -

* * *

JUDGE GRAHAM: But, you know, to tell him, "Okay. Now, you have this objection and this proffer and this argument -- this legal argument -- that you want to make. Well, wait until the end of the trial and make it," and meanwhile you have to try and take a note, and

- PAGE 2671 -

evidence is continuing to be taken by other witnesses -- it's an insufferable condition to say, "Tell me five hours from now what your proffered argument is."

And there are many arguments that I felt were sound and valid that I was unable to make, because you wouldn't -- the Commission would not take the time to hear my proffers at the time that I wanted to make them. And I would just like to preserve that objection on the record at this time.

THE CHAIRMAN: All right.

* * *

DOCUMENT 7

Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner

- PAGE 483 -

* * *

THE CHAIRMAN: All right. Judge Graham, you had asked time to get something to eat. How much time -- I don't want to give an hour. Would 25, 30 minutes suffice?

JUDGE GRAHAM: In 25 or 30 minutes I couldn't even get up to McDonald's and back.

THE CHAIRMAN: Judge, there's restaurants right across the street.

JUDGE GRAHAM: I couldn't walk to the townhouse and back in 20 minutes. I need an hour's lunch just like any other individual.

THE CHAIRMAN: I will not give you an hour. I will give --

* * *

- PAGE 527 -

* * *

JUDGE GRAHAM: Your Honor, if we're talking about 6 o'clock tonight -- I will not be able to continue after 6 o'clock at night. I've been going from six -- from nine in the morning to 6

o'clock yesterday constantly in hearings; I've been going constantly today from 9 o'clock. The Chair --

THE CHAIRMAN: I will have no further argument on that. I have ruled.

* * *

- PAGE 575 -

* * *

JUDGE GRAHAM: I can't. This rule that I've got to proffer everything, the other items, after being at a hearing all day, from 9 o'clock until 5:30 with a 20-minute break, is completely unworkable. I do not have a computer for a mind. There's no way I can remember all these proffers that you're requiring me to make at the end of the day.

* * *

- PAGE 585 -

* * *

JUDGE GRAHAM: I'm becoming physically incapable of standing up to this, Mr. Chairman.

THE CHAIRMAN: Well, then sit --

JUDGE GRAHAM: At some point you've got to recognize that the due process problems --

THE CHAIRMAN: You may sit down, please, if you want to.

* * *

- PAGE 623 -

cross-examination. Can we close the door, please? Please continue your cross-examination.

JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue. The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

- PAGE 624 -

haven't even --

* * *

- PAGE 648 -

* * *

JUDGE GRAHAM: I'd inform the Commission I'm too exhausted to continue at this point.

THE CHAIRMAN: All right. That ends the cross-examination. Any redirect?

* * *

- PAGE 652 -

* * *

JUDGE GRAHAM: Second of all, I have been in hearing nine hours yesterday, ten hours today with but a 20-minute break, including --

THE CHAIRMAN: You have not been on a 20-minute break. You've been on other breaks here. Do not mislead the Court or the record.

JUDGE GRAHAM: That is --

THE CHAIRMAN: I'm not going to argue with you anymore. The Commissioners may stand down.

* * *

- PAGE 661 -

JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. . . .

* * *

- PAGE 663 -

* * *

JUDGE GRAHAM: Excuse me. I do have other evidence that -- if I had had it -- if I hadn't been so exhausted and had been given some time to look through my files, I would have had other cross-examination, specifically with respect to this individual's

involvement in filing a complaint against Charles Horn, the individual that ran against me in the last election. . . .

* * *

- PAGE 687 -

* * *

JUDGE GRAHAM: This procedure, where the Commission has kept me nine and ten and a half

- PAGE 688 -

hours at a time, with like a 20-minute break yesterday, has resulted in these files getting ever more disorganized.

* * *

DOCUMENT 8

Affidavits Related to JQC Misconduct

Note: This document is a composite of the affidavits filed by the Petitioner and seven citizens of Citrus County who personally witnessed the JQC proceedings. They were filed in open court at page 408 of the official transcripts (A-699) in support of the Petitioner's motion to disqualify seven members of the JQC.

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

STATE OF FLORIDA:

COUNTY OF CITRUS:

Comes now the Honorable Gary G. Graham, Citrus county Court Judge, Respondent Judge in the above-styled cause, who does swear and affirm that the following is true:

That the following talked tome at the beginning of the proceedings on January 27, 1993, in the above-styled cause. They are:

Joe Body

Chris Litras

Helen Zelby

George Lizanetz

Alex Ilnyckyj

They have told me that they observed the following during the proceedings of January 26, 1993:

1. That Stanley G. Tate was reading a newspaper during the proceedings.

2. That Miette Burnstein and Nancy Mahon were talking and giggling for extended periods of time.

3. That William C. Clark was reading a newspaper during the proceedings and appeared to be sleeping at one

point.

4. Commissioner Burnstein was reading comics in the newspaper.

5. Mr. Kamney was making nonverbal gestures at Chairman Reiter.

6. That Sybil Barnes appeared to be sleeping during the proceedings.

Furthermore, Mrs. Bodi advised me that today Mr. Clark was appearing to be sleeping as early as 9:30 a.m. today.

Finally, these individuals were ready, willing and able to testify before the Commission about these matters and Chairman Reiter refused to let them.

Based on the foregoing, Respondent Judge fears that these individuals are biased against him and that he will not receive a fair hearing.

WHEREFORE, Respondent Judge requests that Commissioners Barnes, Kaney, tate, Burnstein, Mahon, Clark, and Reiter be disqualified.

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

_____/

AFFIDAVIT

Comes now Alex Ilnyckyj and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Alex Ilnyckyj
Alex Ilnyckyj

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Joe Body and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Joe Body
Joe Body

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

_____/

AFFIDAVIT

Comes now Chris Litras and does swear and affirm that the following is true:

That i have read the Affidavit of Judge Graham with respect to the disqualification of Commissioner Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Chris Litras
Chris Litras

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Helen Zelby and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Helen Zelby
Helen Zelby

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now George Lizanetz and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ George Lizanetz
George Lizanetz

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
J U D G E , N O . 9 1 - 4 1 5
SUPREME COURT NO. 80,273
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Daniel R. Mason and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Daniel R. Mason
Daniel R. Mason

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Marie L. Mason and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Marie L. Mason
Marie L. Mason

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

DOCUMENT 9

Excerpt from the Record Supporting Reasons for Selective Prosecution

- PRETRIAL CONFERENCE PAGE 43 -

My affirmative -- let's -- my defense is simple. When you have a county judge, an elected public official, who has stepped on the toes of a bunch of entrenched politicians by cleaning up the county court and who has 24,000 cases in six years -- anybody, any Commission, could go through with a microscopic examination of those 24,000 and come up with 25 examples like this. They could do that to any judge that was unpopular. They could do it to any judge who ran the courts for the people of the State of Florida and not for the attorneys and the newspapers and the other judges. Any judge, 24,000 cases, you could find examples as trivial as saying, "Sir, you're on DUI probation. You're going to need transportation, so get a bicycle."

So what has happened? I haven't gone

- PRETRIAL CONFERENCE PAGE 44 -

along to get along. I have stood up for the principles that I promised the people of this county. And because the attorneys, the newspapers, and the other politicians are unhappy with me, they have brought these charges, and they have brought here to the Commission's attention my gravest error: exercising my free

speech as a judge -- to say what? To say that some attorneys were misbehaving in court. To criticize some other judges fairly and accurately and truly. Everything I've ever said has been the truth. And now --

THE CHAIRMAN: Judge, I would like you to get to the issue of 100 judges, though. I understand what you're saying. What I want to know --

JUDGE GRAHAM: I'm getting there.

THE CHAIRMAN: -- is the number.

JUDGE GRAHAM: Mr. Reiter, I'm getting there.

So now we have a Commission of attorneys and judges and influential people deciding whether I'm right or wrong under a code --

MR. BOSTIC: Mr. Chairman --

- PRETRIAL CONFERENCE PAGE 45 -

JUDGE GRAHAM: -- that is so vague.

MR. BOSTIC: -- he is simply arguing the motion to dismiss.

THE CHAIRMAN: I note your objection. Judge Graham, will you please just go to the issues about the --

JUDGE GRAHAM: I'm there.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: It is so vague that you folks could do this to any good judge if his politics -- if you don't mind me using a colloquialism -- ain't right.

* * *

- PRETRIAL CONFERENCE PAGE 75 -

As long as a judge keeps -- minds his Ps and Qs with the attorneys and the newspapers, he doesn't have to worry -- unless he goes out and does something really, you know, serious, like stealing, taking bribes. One judge was accused of attempting to kill a confidential informant. Sure. Those are the things that are properly within the constitutional purview of this Commission. But when you go out picking on little old judges like me for telling the truth and being uppity enough to complain about misconduct in the judicial system, at least you've got to give him an opportunity to prove it's true.

* * *

PRETRIAL CONFERENCE PAGE 187 -

JUDGE GRAHAM: 12, 13, and 14 are not being offered to prove the truth or accuracy of the matters stated therein. They are

offered to prove that Mr. King was upset with me for exercising my rights to challenge his -- to challenge his conduct in the federal courts, and it also shows that Commissioner Frank was interested in my proceedings in the federal courts.

And I hope to argue to the United States Supreme Court that this Commission seems to get especially sensitive about judges who turn to the federal courts for protection and that this is one of the reasons I'm being selectively prosecuted.

* * *

- PAGE 400 -

* * *

THE CHAIRMAN: All right. This Commission is going to stand in recess. I request, Judge, that you stay right where you are. We are bringing in a circuit court judge appointed by the Supreme Court to show grounds why you should not be held in contempt of the Circuit Court.

And if you'll stay right there -- and, Mr. Bostic, what I'm going to ask you to do is to proffer the questions while the -- Circuit Judge Yawn, a retired judge appointed by the Supreme

Court for the sole purpose of ruling on issues of contempt in this matter -- he is waiting to come in here.

- PAGE 401 -

The Commission will stand down, I will stand down, and he will come in here. And I want you just to wait until he gets here.

JUDGE GRAHAM: I would like to request information.

THE CHAIRMAN: Don't -- Judge, I --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: I'm making an objection as an attorney -- not as an attorney, but as a litigant representing myself, I would like to voice an objection that somehow or other this has already been prearranged that a circuit court judge is here, on the spot --

THE CHAIRMAN: That's right, Judge.

JUDGE GRAHAM: -- and I knew nothing about this. I would like to know how this got arranged and if Mr. Bostic had anything to do with it.

THE CHAIRMAN: Mr. Bostic had nothing to do with it, Judge. This is by practice of the Commission. All right?

* * *

- PAGE 570 -

* * *

Q And what documents did he ask you for?

THE CHAIRMAN: The Chair does not understand the purpose of this questioning. It is not relevant.

JUDGE GRAHAM: I will proffer it.

THE CHAIRMAN: You can proffer it after. Unless you can tell me how it's relevant to the issues of this case -- please indicate now.

JUDGE GRAHAM: Because Judge -- Commissioner Frank asked for a copy of my federal pleadings, and it's going to be one of my arguments that this Commission got miffed because I went to the federal courts for protection against the false accusation of this

- PAGE 571 -

individual that I had violated a law; and that it was the subject matter of a pending JQC proceeding; and that this is part of the selective prosecution of my case.

It is also to go to my affirmative defenses that this entire procedure, where investigators request federal pleadings as if

they're some type of evidence of guilt of judicial misconduct -- are requested by Commission members from complainants. The Commission had no business whatsoever asking for a copy of that federal complaint --

THE CHAIRMAN: All right. The --

JUDGE GRAHAM: -- and it could do nothing but poison their mind if they thought that was evidence of judicial misconduct.

* * *

- PAGE 668 -

* * *

MS. SCHUMACHER: Judge, could I see that?

JUDGE GRAHAM: Certainly.

MS. SCHUMACHER: Thanks.

This -- I would have shown through the examination of Mr. King that Judge Frank called him on the 20th of June, 1991. And evidently, from this -- and that's what I hope to establish through his testimony -- that he wanted the pleading in the federal lawsuit. And I hope -- you know, I believe that this case is destined for some type of resolution in the federal appeals courts. I really do. I hope so, because we cannot have an independent judiciary and a

judiciary of integrity when we have a Commission that goes around getting its nose bent over the fact that judges are filing

- PAGE 669 -

federal lawsuits and winning them with respect to judicial conduct and judicial ethics.

And I hope to show and establish that the Commission was exposed to this fact by the disgruntled litigants and my political opponents who were unhappy with the fact that the Commission had not done anything, and they said, "Look at this. Now, he's going to the federal courts to cut you off."

And I want to -- this was evidence of the selective prosecution of this Commission that it would select me out because I had gone to the federal courts for relief. In other words, now they're going to show me this is what happens if you go to the federal courts for help.

* * *

- PAGE 1773 -

* * *

MR. FRANKLIN: Go ahead. You're on the air.

MR. MARTIN: One of the things I've noticed -- I've been in Citrus County approximately -- going on five years now, and I started to attend Commissioners' meetings, and the next day I'd read the paper. Now, people came to that podium, and they had very valid things to bring out to that Commission. If it was critical to the Commissioners, the newspapers protected them.

The newspapers of Citrus County -- mainly the Chronicle -- wants to play ball with the politicians. If the politician plays ball with them and if Judge Graham would play ball with the Chronicle, everything would be hunky-dory. The Chronicle wants to run the politics of Citrus County; and if they can't do it, they're going to character assassinate you. And that's my question and -- I have no questions of you actually, Judge. You're doing a good job. My name is John Martin, by the way.

JUDGE GRAHAM: Nice to hear from you.

MR. FRANKLIN: Thank you very much.

MR. MARTIN: Bye-bye.

JUDGE GRAHAM: Mr. Martin, if the question is do I agree with that, you are -- you hit the nail right on the head. That's what I say.

You know, the thing about newspaper editors -- they don't want to go out -- they're not doers. They don't want to go out and do anything. Have you ever noticed that?

How many newspaper editors have you ever seen that qualify for public office? If they don't think these people are doing such a good job, why don't you ever see a newspaper editor put their reputation, their money, their effort on the line and try to do something? All they want to do is hide behind that typewriter, criticize, insult, ridicule others.

And you know what? They're very used to having their way with public officials, because most public officials are terrified of the newspapers, because they make them or break them.

And the thing that irks the newspapers in this county so much is that I don't care what they think about me. I tell them I don't care

what they think about me. And when they try to put pressure on me with their editorials, I completely ignore them, and they know it. They complained about me putting the guy in jail for ten days for cussing. They write up an editorial saying that I'm unfit and that the people ought to throw me out of office. And then, two weeks later, when somebody with a worse record comes in and says a worse word, I'll put them in jail for 20 days, and it infuriates them.

That's -- to them -- it's a personal thing with them, a power thing. They are used to shoving around public officials with their opinions, and I won't let them.

And the reason is simple. And, you know, I hope this doesn't sound self-serving, but it's the truth. A famous man once said the difference between a politician and a leader is that a politician thinks about the next election and a leader thinks about the next generation. Okay?

I am not a politician. I think about the next election. Okay? I think about it. I would like to win the next election, but I will

not do anything I think is wrong even if I think it will cause me to lose the next election. And that's what people want nowadays.

And the ironic thing is that when the people get somebody like that, the newspapers can't stand them, and then they'll write editorials about "Why don't we have leaders in office anymore?" The reason we don't have leaders in office anymore is because true leaders don't make their every decision with their ear and their eye to the newspapers. And when you get a true leader, the newspapers can't stand them.

EXCERPTS FROM PETITIONER'S
SHOW CAUSE RESPONSE

* * *

- PAGE 428 -

> Woven throughout the fabric of these proceedings is a disturbing question: Under what conditions may the elective process be nullified by the discipline or removal of elected judicial officials? The question is a disturbing one because in a democratic society the people's elected officials should not be disturbed in their tenure except in instances of great aggravation.

- PAGE 429 -

> In Re Kelly, 238 So.2d 565, 574 (Fla. 1970) (dissenting opinion).

These words spoken by Justice Ervin some 23 years ago come back now to haunt the court. During the last quarter of a century the Commission has become ever more powerful in the execution of its duties. Another regrettable inquiry is now before the court that probably ought never to have been pursued.

It was pursued because the Commission, like Chief Judge Swigert, believed the "Horror Stories" about Judge Graham reported by the newspapers and his political opponents and did not bother to talk to him before jumping to the conclusion that what they heard was true.

If like Ms. Willis they had listened to the other side of the story before filing formal charges, they would not have been filed.

But instead they told Judge Graham they would listen to him for only five minutes per charge, an impossible time limit to accomplish the complicated explanations involved in this case.

So Judge Graham said let's go to trial and he told the public what was going on. That made the Commission angry. Bad judges are supposed to buckle at the knees before the mighty power of the Florida Judicial Qualifications Commission. Furthermore, Judge Graham in exercising his right to free speech explained to the public that he intended

- PAGE 430 -

to prove that he was right when he said attorneys had misbehaved and politics, favoritism, and friendship had in the past been pervasive under the administration of Leonard Damron. He also announced his intention to exercise his right to use his office to defend himself.

If the Commission was angry before, now it was infuriated. Judge Graham was actually going to defend himself and it was clear now that they had opened up a pandora's box that was going

to reveal some gross truths about the Citrus County Judicial System.

They then systematically set about doing everything they could to prevent Judge Graham from defending himself including adding a separate charge against him for asking for public information and using his office to defend himself.

The deeper the Commission got into the case the more they realized Judge Graham was right and the more they realized how big a mistake it was not to have given him a little time to talk to them in a confidential hearing. However, instead of dropping the charges they proceeded to force him to a hearing unprepared, his subpoenas quashed, his evidence suppressed, his witnesses excluded, and under circumstances so severe that he could not possibly continue.

But he didn't cave in. Their rage built. Who is this man to challenge us? He's actually insisting on the rules of evidence. He's asking to proffer argument and proof. He's demanding to view the hundreds of documents the Commission

* * *

EXCERPTS FROM PETITIONER'S REPLY
TO COMMISSION'S REPLY

This Honorable Court should keep in perspective the history of the Commission. It was created because Judge Kelley's political opponents and some fellow judges with an ax to grind could not get him impeached.

During the Senate trial counsel for Kelley articulated the concern we must all have for the independence of the judiciary:

> "Our primary responsibility is to Richard Kelly, but I think, in a larger sense, that we have a responsibility to the entire judiciary of the State of Florida. The proposition that is before you in these proceedings involves every judge, sitting in every court in the State of Florida, and that proposition is simply this:
>
> Must a judge render decisions on the basis of the influence of the lawyer involved? Must a judge curry favor with the Bar that practices before him, or risk impeachment, risk being discharged from his office, risk public disgrace and humiliation, or can he make his decisions independently, as an independent judiciary was intended to make them?
>
> Now, gentlemen, I think, also, in a larger

> sense, every citizen of the State of Florida is a participant in these proceedings because, when the

> independence of the judiciary is diminished, it diminishes all of us. The very foundation of all our liberties and all our rights depends upon an independent judiciary, which is not subject to prejudice by lawyers, litigants, or from any other source."

Therein lies the double irony of this case.

First, Judge Graham is assailed not because he is unethical, dependent, or lacks integrity. He is being assailed because he has two [sic] much integrity to remain silent and ignore the misconduct of others as it affects the immediate due administration of justice in the Citrus County Court.

He won't let a State Attorney who has engaged in politics and favoritism in the disposition of criminal cases for politically prominent individuals, prosecute an admitted felony offense in misdemeanor court without asking why. He will not let defendants or their attorneys falsify the record without comment.

He will not allow the Chief Judge to abuse his administrative authority by removing him from a criminal case for having correctly ruled against the State of Florida and to do so with an Administrative Order which lies about the reason it was executed. He will not let attorneys play the fool in

leather disco jackets. He will not let a high ranking Deputy Sheriff "grab" his friend out of jail.

Furthermore, he is just too fiercely independent to allow the newspapers, the attorneys, his political opponents or the Commission to frighten him away from his duty to speak up against these outrages.

The Second irony is that the very Commission that is supposed to defend the independence and integrity of the judiciary has become an instrument of oppression to crush the very independence and integrity it was created to preserve.

The Commission, inflamed by the newspaper editorials sent to it by Mr. King, did not have the integrity or independence necessary to conduct a fair investigation of Judge Graham.

It jumped to the conclusion that he was guilty and proceeded to the eight day hearing which was a complete joke. Nothing that Judge Graham is falsely accused of singularly or cumulatively comes close to the rude arrogant, indifferent and wrongful treatment meted out by the Commission during the proceedings which were viewed by thousands of Citrus County citizens.

The Commission did not try Judge Graham. It disgraced itself. It proved just how correct the Bench and Bar Committee is in recommending a restructuring of the Commission.

The Commission has indeed become an "instrument of oppression". It has become a lever of special groups or interest which threaten the independence of the judiciary. It has become its practice to concern itself with trifles or mares' nests of unsubstantiated charges.[4/] It has become an institution which no longer provides proceedings which are "essentially fair".

The time has come to destroy it. The Bench and Bar Committee agrees. The facts of this case cry out for its destruction. The Judges of this state are becoming a timorous lot afraid of their judicial shadows, fearful to exercise conscientiously their rights.

I urge this Court to stand up for Judge Graham. I urge it to stand up for the people of Citrus County. I urge it to stand up for the independence and integrity of the judiciary and the fundamental values of our nation.

4/Judge Bryson is currently under prosecution for receiving wake-up calls from a County Commissioner. Judge Perry is being

prosecuted for holding defendants in contempt for driving away from the Courthouse after their licenses have been suspended.

- PAGE 67 -

I urge the Court to do what has never been done in the almost one quarter of a century that the Commission has existed. I ask it to reject the Findings of the Commission.

I also ask it to commend Judge Graham for his dedication and courage in reforming the Citrus County Court and standing up for its integrity over almost overwhelming opposition.

Finally, I urge the Court to rule the Commission and the Code it enforces unconstitutional and to work toward its replacement by a system which at a minimum provides respondent judges with the right to a civil trial before an unbiased jury of fellow citizens.

Respectfully submitted,

/s/
HONORABLE GARY GRAHAM
Post Office Box 519
Inverness, Florida 34451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street,

Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, This 1st day of June 1993.

/s/_____

93-713

CASE NO. _____

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME TWO

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

INDEX TO APPENDIX

Document	Description	Page
	VOLUME ONE	
1	Opinion of the Florida Supreme Court In Re: Judge Graham	2
2	Findings of Fact, Conclusions of Law and Recommendation for Removal	19
3	Judge Graham's Proffer to an Empty Courtroom	63
4	Excerpts from the Record Demonstrating the Conduct of the JQC During the Proceedings	71
5	Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings	97
6	Excerpts from the Record Where Proffers were Denied	125
7	Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner	173
8	Affidavits Related to JQC Misconduct	180
9	Excerpts from the Record Supporting Reasons for Selective Prosecution	191

VOLUME TWO

10	Federal Questions Preserved	213
11	Excerpts from Deposition of County Court Judge Woodrow Beauchamp	359
12	Excerpts from Deposition of former Circuit Court Judge Harry Lee Coe	381

VOLUME THREE

13	Excerpts from Deposition of former Chief of Justice of the Florida Supreme Court Raymond Ehrlich	408
14	Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992 (Exhibit 126 of Show Cause Response)	423
15	Excerpts from the Report of the Bench/Bar Commission, January 1993.	427
16	Opening Statement of Judge Graham	436
17	Closing argument for Judge Graham	445
18	Excerpt from Show Cause Response	557

VOLUME FOUR

18	Excerpt from Show Cause Response (Continued from Volume Three)	601
19	Excerpts from Judge Graham's Reply to Reply	655
20	Letter from Brad King to Florida Judicial Qualifications Commission with attached newspaper editorials	657
21	Notice of Formal Charges	666
22	Amendment to Notice of Formal Charges	688
23	Excerpts from transcripts of the proceedings	698
24	Excerpts from transcripts of the pre-trial conference	722
25	Excerpts from Transcripts of Proceedings Before JQC July 31, 1992 (Second Rule 6b hearing)	746
26	Answer to Affirmative Defenses and Motion to Strike Demand for Jury Trial	756
27	Order Granting in Part Motion of Limine and Limitation of Witnesses	759
28	Florida Judicial Qualifications Commission Rules	762

29	Listings of Judicial Disciplinary Codes and Procedures by State	776

VOLUME FIVE

30	Fourth Amended Motion to Dismiss	800
31	Florida Constitutional Provisions	867.5
32	Applicable Excerpts of the Florida Code of Judicial Conduct	874.5
33	Wisconsin Statutes	878.5
34	Public Response to JQC Proceedings Excerpts from Exhibit to Show Cause Response #174	884
35	Public Response to Formal Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108B	898
36	Public Response to Adverse Publicity Prior to Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108A	907
37	Motion in Limine dated February 18, 1993	916.5
38	News Article, Citrus County Chronicle, Sept. 15, 1988 (Judge says some attorneys act goofy)	934.5

39	Motion for Continuance dated December 18, 1992	937.5
40	Motion for Continuance dated January 13, 1993	961.5
41	Resume of Judge Graham	971.5
42	Excerpts from Transcript of Proceedings before the JQC May 18, 1992 (First Rule 6b hearing)	975.5
43	Motion for Continuance dated February 10, 1993	983.5

VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

DOCUMENT 10

Preservation of Federal Objections

This document is composed of excerpts from:

1. The transcripts of the Trial Proceedings (A 214);

2. The transcripts of the Pre-trial Conference (A 308);

3. The Petitioner's Show Cause Response (A 327);

4. The Petitioner's Second Amended Motion to Dismiss (A 330);

5. The Petitioner's Reply to Commissions Reply (A 334);

6. The Petitioner's 4th Amended Motion to Dismiss (A 337) [reprinted more fully at A 800]; **Note**: Petitioner's Affirmative Defenses are not reprinted here because they are set forth in full in this excerpt of Petitioner's 4th Amended Motion to Dismiss.

7. The transcripts of the Petitioner's Rule 6(b) Hearing Before the JQC (A 349).

Petitioner's 4th Amended Motion to Dismiss is fundamentally the same as his First through Third Motions, with certain corrections and expansions. Those motions in their entirety will be available to the Court if and when the full record is brought forward for review.

Where the objections to the proceedings initially fail to specifically state that they are based on Federal grounds they were renewed on the basis of the United States Constitution at pages 1951 and 2144 of the proceedings and pages 322 of the Petitioner's Show Cause Response. (A 286, A 288, A 329)

At page 232 of the proceedings the JQC granted Petitioner a continuing objection to the proceedings based on federal due process grounds. (A 235)

Excerpts

from

The Transcription of the Trial Proceedings

- PAGE 17 -

* * *

JUDGE GRAHAM: You will not allow me to address this issue before the ruling is made?

THE CHAIRMAN: The ruling has taken

- PAGE 18 -

place.

JUDGE GRAHAM: I would object on the basis of due process of law. The Chairman of this Commission has just made a ruling that is going to affect the evidence in this case. If I understand it correctly, it's going to allow percipient witnesses, these newspaper reporters -- I was going to call them as percipient --

- PAGE 21 -

* * *

THE CHAIRMAN: Your request is denied. Is there any further argument in reference to the presence of the lawyers during the presentation of evidence --

JUDGE GRAHAM: I would object to your ruling.

- PAGE 22 -

THE CHAIRMAN: -- I mean of the reporters. Of the reporters.

JUDGE GRAHAM: Excuse me. I object to your ruling on the basis that it denies me my fundamental right to a fair hearing that you folks are now going to go to discuss the case; when you discuss the case and discuss the merits of these matters which have been brought up and argued without notice of a hearing, without me being able to be prepared for the argumentation on any of these issues; and that when you discuss it and bring up issues of law or fact, I will not be there, able to defend myself and tell the other side of the story and present findings of law.

THE CHAIRMAN: All right. Judge Graham --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: -- your objection is noted.

JUDGE GRAHAM: My objection is not finished.

THE CHAIRMAN; Judge, your objection is noted.

JUDGE GRAHAM: Will you not let me finish

my objection?

THE CHAIRMAN: I would ask that the Commission -- and we will be back shortly.

- PAGE 30 -

* * *

Any other matters to be brought before our attention?

JUDGE GRAHAM: Yes. I'd like to argue my motion to disqualify the Commission.

THE CHAIRMAN: That has been ruled on, and we will hear no further argument on that.

JUDGE GRAHAM: May I note for the record

- PAGE 31 -

that it was ruled on without allowing me to argue its merits?

THE CHAIRMAN: So noted.

JUDGE GRAHAM: And I would object on the grounds that you have violated my due process rights under the federal and state constitutions.

* * *

- PAGE 44 -

JUDGE GRAHAM: I would make a motion to disqualify Mr. William C. Clark.

THE CHAIRMAN: And your grounds, sir?

JUDGE GRAHAM: Which one is Mr. Clark?

THE CHAIRMAN: Mr. Clark is the gentleman in the blue suit. What is your --

JUDGE GRAHAM: Good morning, Mr. Clark.

THE CHAIRMAN: -- grounds for the motion for disqualification?

JUDGE GRAHAM: Okay. This is based on a constitutional argument. It's a fundamental error -- I believe fundamental error in the rules itself. Mr. Seth Dennis recused himself. It can only be presumed that he felt some type of bias or prejudice either for or against me. I do not know. I don't know, because the Commission would not let me take his deposition. Now, here's a fellow who is either prejudiced or against me -- Mr. Seth Dennis -- and yet, after he recuses himself -- under Rule 26, promulgated by the Florida Supreme Court pursuant to the constitution of the State of Florida, "The Commission shall make ad hoc appointments of a person or persons to take the

place of a member or members of the Commission so disqualified, but each member so disqualified may participate in the action of the Commission in making his appointment."

So that means that, pursuant to the rule, the person who says, "I'm biased or prejudiced against the judge," gets to participate in choosing a member to replace him. Now, that is fundamentally unfair, and it's a violation of my due process rights guaranteed by both the state and federal constitution.

- PAGE 49 -

* * *

JUDGE GRAHAM: Yes, I would make a motion to renew my -- actually, I would make a motion for a hearing -- not a rehearing but a hearing -- on my motion for a pretrial conference, and I would like to argue the merits of having a hearing on it.

THE CHAIRMAN: there's no necessity for argument. The motion is denied for a pretrial hearing at this time.

JUDGE GRAHAM: At this time, I would cite to the Commission the opinion of --

THE CHAIRMAN: Judge, is this in reference to my ruling just now?

JUDGE GRAHAM: Yes. I would like to state an objection--

THE CHAIRMAN: I will not take any further comment on that, Judge. Please proceed.

JUDGE GRAHAM: I would like to -- may I preserve my record on appeal?

THE CHAIRMAN: You can make your proffer

at a time later, when the Commission is not here. I have ruled on that. There is not going to be any further argument. Please proceed.

JUDGE GRAHAM: All right. I don't understand, because -- this is so unusual that I don't understand it. I think I am being told that I cannot establish a record on appeal by citing the case that says you must listen to my arguments.

THE CHAIRMAN: Please proceed, Judge. Do you have anything else to present to the Commission before I have opening statements made?

JUDGE GRAHAM: Yes. I would like a motion to -- for a rehearing on my second amended motion to dismiss. The basis for this is as follows --

THE CHAIRMAN: Judge, that is out of order at this time.

JUDGE GRAHAM: Excuse me, but I --

THE CHAIRMAN: It is out of order at this time, and I will not take an argument on that.

JUDGE GRAHAM: Let the record reflect that my second amended motion to dismiss has

never been noticed or heard -- that is a speaking motion -- that the Commission did not allow me to call witnesses to prove the factual basis of the motion; and that counsel for the JQC filed a response to the motion stating that it contained false allegations; and that the appellate court on appeal, are going to be in a quandary, because -- with issues of fact left unresolved, there is more than just a issue of law to be decided by the Commission with respect to this complicated, 58-page motion to dismiss.

THE CHAIRMAN: Judge Graham, I have ruled on that. I'll ask you to proceed, please.

JUDGE GRAHAM: I'm stating this for the record.

THE CHAIRMAN: You have stated your point. I want you to proceed. You've made your point clear. Please proceed with

any other matter you want to bring before we begin opening statements.

JUDGE GRAHAM: Is it my understanding that I cannot state Robert -- Charles versus State of Florida?

THE CHAIRMAN: I have ruled on the

- PAGE 52 -

matter, Judge. Pease proceed.

JUDGE GRAHAM: I would ask for a mistrial based on the ex parte communications that the Commission has had regarding my case.

* * *

I was going to go by them one by one to establish a record on appeal just how egregious the Commission's conduct and denial of my due process rights have been.

You noticed it took me perhaps two minutes to try to find my file, and you interrupted me. I would state -- at this time, I would renew my motion for a continuance. I would bring to your attention --

- PAGE 53 -

* * *

JUDGE GRAHAM: The Commission kept me doing a dance answering to three separate stages of pleadings. First they charged me with eight charges. Before I could get ready for the 6B hearing on eight charges, they

informed me there would be another 21. Before I could finish getting ready for the 6B hearing on the 21 and while I was still preparing for the 6B hearing on the 21, they sent me a notice of -- that they were going to investigate -- excuse me. I might be getting this incorrect, and the reason I am getting it incorrect is because I have not been able to prepare.

In any event, they constantly had me either preparing for a 6B hearing and simultaneously preparing complex motions to dismiss or answers and affirmative defenses at the times that I was answering -- doing my motions to dismiss on the first or second waves. And until the close of pleadings, I was completely tied up with very complex issues of pleading and law.

December 30th -- that's 27 days ago -- the pleadings closed. I then started taking depositions. I've been in depositions sometimes 14

hours a day. I'm going to state for the record what I've been doing since January 30th.

- PAGE 55 -

* * *

JUDGE GRAHAM: I am trying to point out that the Commission has proceeded against me in a fashion which has made it completely impossible for me to organize, prepare, and provide an adequate and good defense to these charges; that these are -- while the charges are trivial, including stating that you can't separate morality from the law, the issues of this proceeding are extremely important. This commission has proceeded as if this is some type of -- honestly, like a small claims case.

I have been a lawyer for ten years --

THE CHAIRMAN: Judge, may I --

MR. BOSTIC: Your Honor, we are -- Mr. Chairman, we are hearing the motion to continue over again, which has been denied twice and rejected by the Supreme Court.

THE CHAIRMAN: Judge Graham, if the basis of what you're doing is for a motion for continuance -- which you've stated on the record -- I do not have to have further argument on it.

- PAGE 66 -

* * *

JUDGE GRAHAM: I have a motion to disqualify which came to my attention at the end of the break. It has to do with Mr. Kaney, and it is a speaking motion.

THE CHAIRMAN: Are you speaking of Judge Kaney?

JUDGE GRAHAM: This fellow right here.

THE CHAIRMAN: Judge Kaney is the vice chair of this Commission.

JUDGE GRAHAM: Are you Judge Kaney? I would call -- is Jim Ross here? Step forward.

THE CHAIRMAN: Hold it. Judge, I don't think this is proper now, and I'm not going to

- PAGE 67 -

take any testimony at this time.

JUDGE GRAHAM: Excuse me. This is a speaking motion that goes to the disqualification of this individual.

THE CHAIRMAN: State your grounds for the -- please do not be making comments to the Commissioners. Make your comments --

JUDGE GRAHAM: I'm not making comments. I was just indicating the individual.

THE CHAIRMAN: Make your comments to me, Judge. What is the grounds for the disqualification?

JUDGE GRAHAM: The grounds is that when I have not been looking, I have been told by several individuals that this individual of the Commission has been making nonverbal communications to the Commissioner, asking you to cut me short, shaking yes, shaking no, and otherwise indicating things to you. And Mr. Ross has verified this to one of my assistants. I would like to call Mr. Ross and have him verify this to form the basis of my motion.

THE CHAIRMAN: Your motion to disqualify is denied. Your motion to have testimony presented is denied. We are going to proceed

- PAGE 68 -

with the opening statements now.

JUDGE GRAHAM: I object to this on the basis of both my federal and state due process rights to make an argument, to present facts, and to make the motion to disqualify.

THE CHAIRMAN: I am allowing 30 minutes to each side. I will remind counsel and Judge Graham that this is what the evidence intends to prove to be shown in the case. I will ask that there not be argument made.

Mr. Bostic and -- Ms. Clerk, who is keeping the time down there? Is someone keeping a clock?

THE CLERK: I am.

- PAGE 111 -

* * *

I will state for the record there is no way I can make a reasonable opening statement on 41 charges, almost half a hundred charges of unethical conduct, in 30 minutes. This is just another denial of my fundamental rights under the federal constitution of due process of law.

- PAGE 155 -

I think that I have an absolute right to view a document before it's introduced into evidence. It's just -- with all due respect, Mr. Chairman, it's incredible to me. I have never, ever in a court of law seen a document introduced into evidence without allowing the opposing party to look at it before it was introduced.

THE CHAIRMAN: You can certainly look at it, Judge, but we are not going to sit here for three, four, five minutes while you calmly go through each and every item in those documents and look at them when this should have been done before. And that was in my pretrial order for you people to look at your exhibits, and it was not done, apparently.

JUDGE GRAHAM: Excuse me. I think I should address that pretrial order. I think it was called "In Re Order" -- "In Re" --

MR. BOSTIC: Order In Re: Trial.

JUDGE GRAHAM: Order In Re: Trial. This was an order received without -- no one moved for this order. This order was made, I can only presume or understand, sua sponte by the Chairman or whoever signed it. And I received it

in the middle of an extremely busy deposition docket where I'm trying to discover the facts of this case, and I have had no opportunity whatsoever -- no ability to comply with that order.

And then to bootstrap that and say, Okay. Because you couldn't comply with an order that we threw on you three or four days before trial when you were in the middle of 14-hour-a-day

depositions trying to discover the facts of the case, we're not even going to allow you to look at the documents before we introduce them into evidence," is an error of law and a denial of my fundamental rights protected by both the federal and the state constitution.

MR. BOSTIC: Your Honor, I don't believe it is an error or law. I don't believe it is a violation of his rights. I believe the Commission has the absolute right to enter an order. I --

THE CHAIRMAN: I don't need argument. The order has been entered, and that will suffice. Please proceed.

* * *

- PAGE 175 -

* * *

THE CHAIRMAN: All right. Pursuant to Florida Statute 90.202, I have the right to take judicial notice of the records of any court of this state, and I am now so doing on those exhibits that have been brought here. And I would ask Mr. Bostic to identify the exhibits, and they will be judicially noticed and put into evidence.

MR. BOSTIC: Your Honor, Exhibit --

JUDGE GRAHAM: Excuse me. May I respond?

THE CHAIRMAN: Excuse me, Mr. Bostic. Let Judge Graham respond.

JUDGE GRAHAM: First of all, I object to the fact that the Chairman, exercising a quasi-judicial role, has sent General Counsel on an errand to do something for him, and I would request that the Chair disclose on the record what the request was.

THE CHAIRMAN: Your request is denied.

JUDGE GRAHAM: I object. It's the equivalent of a judge asking opposing --

- PAGE 176 -

THE CHAIRMAN: Judge, I am not going to take any more argument on this issue. Are you going to respond to my notice of taking judicial notice --

JUDGE GRAHAM: Yes.

THE CHAIRMAN: -- of those --

JUDGE GRAHAM: I would ask to see the statute book on judicial notice. You were reading from it.

THE CHAIRMAN: Florida Statute 90.202, Subsection 6.

JUDGE GRAHAM: May I see that, please?

THE CHAIRMAN: Sure.

JUDGE GRAHAM: Okay. If you will read in 90.203, for judicial notice under 90.202, which the Chair has indicated that the Commission is operating under -- "A court shall take judicial notice of any matter in Section 90.202" -- your Subparagraph 6 -- "when a party requests it and gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter."

- PAGE 177 -

There has been no written notice of this request, and therefore, it is inappropriate to take judicial notice of it.

THE CHAIRMAN: your objection is noted, and your objection is denied.

JUDGE GRAHAM: I will --

THE CHAIRMAN: Please identify the exhibits. I am not going to spend any more time on this, Judge Graham.

JUDGE GRAHAM: Okay. I want to make a different objection.

THE CHAIRMAN: No. I am not going to hear any more objections. You've made your objections; I've ruled on it. Please move forward in entering the exhibits.

This is from the clerk's office. These are circuit court files--

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: -- or county court files.

MR. BOSTIC: Yes, sir. County court files or county court tapes.

THE CHAIRMAN: Please identify them. And before you do that, I want to reconvene the Commission, and I'll ask that the Commission be brought back in.

- PAGE 178 -

JUDGE GRAHAM: May I preserve a federal due process objection for the record, Mr. Chairman?

THE CHAIRMAN: Judge Graham, you can preserve any objection you want.

JUDGE GRAHAM: I hereby object to the Chairman's ruling. It is a blatantly clear violation of the rule of law. That rule of law was designed to allow litigants to prepare to meet the matters judicially noticed.

I was given absolutely no notice that these things were going to be judicially noticed. If they were given to me, I'm unaware of it. I believe these documents were the ones that Mr. Bostic threw down on the floor over here just before the trial.

MR. BOSTIC: Mr. Chairman, I threw --

JUDGE GRAHAM: And this is a --

MR. BOSTIC: Excuse me. I threw nothing on the floor before the trial.

JUDGE GRAHAM: And I claim this to be yet another fundamental violation of my due process of law rights protected by both the state and federal constitution.

- PAGE 189 -

* * *

COMMISSIONER DEMERS: Excuse me. I'm a

- PAGE 190 -

little confused. I thought Exhibit 31 was State v. Hodge.

MR. BOSTIC: I'm sorry. It's 39. It's my poor handwriting. It's Exhibit 39. Excuse me.

JUDGE GRAHAM: May I make an objection now or --

THE CHAIRMAN: On what point, Judge? If it's a point you've already stated, you don't have to --

JUDGE GRAHAM: This is a new point. This just shows up the fundamental due process rights of having the investigator, the trier of the facts, and the individual charged with determining the law all wrapped up into one Commission. We are presented here with the almost bizarre case of the triers of fact talking to their attorney, correcting him in the presentation of his case. It's just completely -- I feel like I'm on Mars or something.

THE CHAIRMAN: What is your objection, Judge?

JUDGE GRAHAM: The objection is that the trier of the facts is discussing the case with

the attorney that is opposing me and correcting him, and I would move for a mistrial based on that.

THE CHAIRMAN: Your motion for a mistrial is denied.

* * *

- PAGE 232 -

* * *

JUDGE GRAHAM: Because I want to preserve a record on appeal for the federal courts to show that there is a total lack of due process in this proceeding.

THE CHAIRMAN: Then you have a continuing objection, and I will so rule that you would have asked the question of this witness on

- PAGE 239 -

* * *

JUDGE GRAHAM: May I respond to his last statement?

THE CHAIRMAN: Only as to the offer of the -- Exhibits 14, 15, and 33.

JUDGE GRAHAM: Okay. I object on the same basis as I did previously. I object to not being able to argue them. And I would share with the Commission that no one disdains all the objections that I have to make right now more than myself. I would hope that --

THE CHAIRMAN: Judge, that is a speaking objection. If you'll just state your legal grounds on your objection, please.

JUDGE GRAHAM: I object that I am not being allowed -- that I'm being accused of somehow wasting the Commission's time for making objections which would not be necessary if we proceeded in an orderly, due process fashion.

* * *

-PAGE 311-

MR. BOSTIC: Twenty-one pages.

COMMISSIONER KANEY: Thank you.

JUDGE GRAHAM: I would object for the record that the prosecutor, who was hired by the trier of fact, is discussing the case with the trier of fact, who is also asking questions of the trier of law.

THE CHAIRMAN: Judge, I have no idea what you just said.

JUDGE GRAHAM: What?

THE CHAIRMAN: I have no idea what you just said.

JUDGE GRAHAM: What I'm saying is: You decide the issues of law, they decide the issues of fact, he prosecutes me, and he's your employee, and he's your employee, and you're all discussing this case like it's a roundtable or something --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- and that is a denial of due process.

* * *

- PAGE 356 -

JUDGE GRAHAM: You promised at the end that I could make this due process argument.

THE CHAIRMAN: All right. You can make it to the record. It is not necessary for the Commissioners -- because it's proffer -- for them to listen to it, because I've ruled on it.

Well, they want to stay and listen to your due process argument. Then we'll have everybody stay here for whatever purpose.

JUDGE GRAHAM: I brought to your attention the motion --

THE CHAIRMAN: This is a proffer into the record now. Is that correct?

JUDGE GRAHAM: This is a proffer to my due process objection based on the fact that the Commission is hearing motions ex parte and without notice and without a hearing, because I stated -- back when I was complaining about the motion to unseal records, I said that this thing has been going on routinely. Mr.

Bostic stood up and he said, "No, it's not." And I wanted to share with the Commission and the record two transcripts, and I'm going to read

- PAGE 357 -

from them.

January 12th, the deposition of Tommy Blackman. "And your telephone number" --

THE CHAIRMAN: One second. One second. This court has not adjourned, and I would ask that that door be closed and that people not be entering and leaving the courtroom until Judge Graham has completed. But if you want to leave the room, please do it quietly.

Go ahead, Judge Graham. I apologize.

JUDGE GRAHAM: "And your telephone number is?"

Mr. Blackman's answer: "I have filed an objection and motion for protective order, Your Honor. I was advised by -- I believe it's -- Brooke Kennerly that the protective order has been granted."

Question by me: "Did you file a motion for protective order?"

Mr. Blackman: "Yes. That's what I handed you earlier, a copy of it."

"Earlier? What do you mean earlier?"

"Just then."

Question: "Just now?"

Answer: "Yes. Just now."

- PAGE 358 -

Question: "Okay. Now, this isn't an objection for a -- a motion for protective order, is it?"

"It's an objection and a motion for protective order."

Question by me: "So I am just receiving this motion for protective order. Correct?"

Answer: "Correct. We had it faxed around 12:45 to 1:00."

12:45 to 1:00 Mr. Blackman faxed his motion.

"To who?"

"I believe the fax went to the Clerk of the Circuit Court."

"So you faxed a copy of this motion at what time?"

"12:46 p.m. today, January 12th."

Question: "When I was at lunch and in a building that was a block from here?"

"My understanding was it was the closest fax machine."

"I understand. A block from this building?"

Answer: "Yes, sir."

Question: "You faxed this motion to a

fax machine a block away from this building, where I wasn't even located, wasn't in at the time, because I was at lunch?"

Answer: "We faxed it to the nearest fax machine in the court system."

Question: "Okay. And I'm actually receiving it now, at a quarter to three in the afternoon?"

Answer: "That's your copy, yes."

"And you're advising me that Brooke Kennerly has told you it has already been granted?"

Answer: "Only as to the income tax."

"And she advised you that it had been granted?"

"Correct. I spoke with her this afternoon."

"And you faxed this motion to her also?"

"Correct."

"What time did you fax it to her?"

Answer: "Shortly or some time before we faxed it to you."

"What time exactly?"

"I have a fax to the Supreme Court at 11:47."

- PAGE 360 -

"When did Ms. Kennerly advise you that this motion had been granted?"

"It was during lunch hour."

"Before one?"

"Yes. It was faxed to Roy Rhodes at 11:55."

Question: And granted before 1 p.m.?"

"Correct."

"Now, Mr. Shenk -- excuse me; I mean Mr. Blackman" --

Answer: "Yes, sir."

-- "did you ever notice this for hearing?"

Answer: "We requested a hearing with our fax transmittal. 'Request immediate disposition of the motion, if possible. If I need to set a hearing, please advise my secretary immediately.'"

Question: "Did you notice it for a hearing?"

Answer: "It hasn't been formally noticed."

"Did you notice me of a hearing on your motion?"

Answer: "No."

- PAGE 361 -

Question: "And so your motion -- is it correct to assume that this motion was received and granted without notice to me and without a hearing?"

"I'm not sure when it was faxed to you. You can check with the JQC."

The second example. This is part of the pre-deposition discussion related to administrative matters taken at the deposition of Judge Thurman just January the 18th.

Judge Graham: "Let the record reflect, Mr. Bostic, that I have received several orders from the JQC directed by Federal Express to Gary Graham, Room 215, Old Citrus County Courthouse, and received just now" -- now, this is January 18th. "This is 11:00 in the morning, January 18th, 1992" -- that's an error. Okay? There is a lady in Parade magazine, a savant they ask questions of, and one of the questions they asked her -- they said,

"When does the new year stop becoming the new year?" And she said, "When we stop putting last year's date on everything."

"This is 11:00 in the morning, January 18th, 1992" --

- PAGE 362 -

MR. BOSTIC: Excuse me, Judge.

JUDGE GRAHAM: -- "granting your motion in limine" --

MR. BOSTIC: What page are you reading from, please?

JUDGE GRAHAM: Seven, the bottom of the page, line 45.

-- "which limits me to no more than two opinion witnesses and no more than three character witnesses. Is it correct, Mr. Bostic, that you have never noticed me for a hearing on that motion?"

Mr. Bostic: "There was not a hearing on the motion. That is not the practice of the Commission to conduct hearings on motions. That's correct."

"Did you ever notice me for a hearing?"

"No, I did not."

"Was there a hearing held?"

"Not to my knowledge, no. There was not a hearing."

So what I'm trying to share with the Commission is this -- and I don't even know if the rest of the Commission is aware of this. Three times -- and I believe more than three

- PAGE 363 -

times -- I have had people come up and hand me motions and tell me, "It's granted." And they call that due process of law. I don't think so.

And furthermore, all of these motions which have been granted by the Motion Commission -- excuse me; the Motion Committee -- I have -- there is no way -- I have no idea how they do it. Judge Wigginton signs them. I don't know how they get together. I don't know when they talk about it. I don't know what they consider. I've never been noticed for any of them. I'm never given -- and I would like to state -- it's the case of State of Florida versus Charles, which I've been trying to get into the record all day long.

This is an appeal that I took on behalf of a mentally ill patient -- one of them. Here's what the Second District Court of Appeal said -- the very same issue that I'm raising here about not being allowed to argue the facts or law to the, quote, Court.

I had a judge who didn't believe it was necessary to argue the facts or the law. Okay? "You don't need to do that."

- PAGE 364 -

Quoting from the opinion reversing the judge: "Some cases may appear to the trial judge to be simple, open and shut, and surely, in many such cases, an argument will, in the words of Justice Jackson, be likely to leave a judge just where it found it.

"But just as surely, there will be cases where closing argument may correct a premature misjudgment and avoid an otherwise erroneous verdict. And there is no certain way for a trial judge to identify accurately which cases there will be until the judge has heard the closing summation of counsel.

"Appellants should not have been refused any inquiry into the psychiatrist's expertise, and he should have been granted an opportunity to present a closing argument.

"We recognize that the trial court's dockets are heavy" -- as I recognize that you folks are busy people -- "and we sympathize with the need to keep the process moving" -- which I do sympathize, even though people sometimes get irritated with me for being

a stickler on the evidence. "Nonetheless, due process rights must prevail."

- PAGE 365 -

And, folks, I have said this before. I feel like a little child at a table, you know. And you're sitting there, and they're passing the pork chops and mashed potatoes all around the table, and they're forgetting about you.

Please, just pass a little due process my way. Okay? That's all I'm asking for. And I would make these objections and note them for the record.

THE CHAIRMAN: The objections are noted. The Commission will reconvene tomorrow at 9:00. I would ask that the Commission join with me so we can work out logistics for transportation for tomorrow and a time sequence.

Mr. Bailiff, thank you for you help; and Ms. Court Reporter and Madame Clerk, we'll see you tomorrow at 9:00. Thank you very much.

(Proceedings conclude at 6:10 p.m.)

- PAGE 437 -

* * *

JUDGE GRAHAM: I don't know at this time, Your Honor. I was -- they disappeared into this rubble.

THE CHAIRMAN: Judge Graham, I am sitting here, and I can see those documents where you laid them down.

JUDGE GRAHAM: If you will point them out to me, I will take the ones out that --

THE CHAIRMAN: It was the document you made -- for your opening statement, with the Judicial Canon Number 1, and you have it in your hand.

JUDGE GRAHAM: Okay. Then --

THE CHAIRMAN: And, Judge, you will not mislead me again.

JUDGE GRAHAM: Excuse me, I move --

THE CHAIRMAN: Did you hear me?

- PAGE 438 -

JUDGE GRAHAM: I heard you, and I move for a mistrial.

THE CHAIRMAN: Well, the mistrial is denied.

JUDGE GRAHAM: May I state the basis for my mistrial?

THE CHAIRMAN: No. You will continue, please.

* * *

- PAGE 501 -

JUDGE GRAHAM: Your Honor, I have two files: one is labeled "Brad King"; the other is labeled "Brad King, Public Records Request." They are essential to me being able to cross-examine this witness, and I would ask for a recess for me to be able to find it.

THE CHAIRMAN: Judge Graham, I've asked Mr. Bostic -- you knew that Judge Graham -- I'm sorry; that Mr. King -- was going to testify a

- PAGE 502 -

long time ago, didn't you?

JUDGE GRAHAM: I didn't know when.

THE CHAIRMAN: Well, I'm not going to break anymore. Please proceed in your cross-examination.

JUDGE GRAHAM: I would like to make a record at this point that this is where --

THE CHAIRMAN: There is no further argument on that issue.

JUDGE GRAHAM: I'm not making argument. I would --

THE CHAIRMAN: Judge, please continue with the cross-examination.

JUDGE GRAHAM: Are you ordering me not to make a statement on the record to preserve a due process --

THE CHAIRMAN: You've made your objection. I've ruled on it. You may proceed.

JUDGE GRAHAM: Do I understand that I may not mention the federal courts?

THE CHAIRMAN: Judge, I've already ruled on it.

* * *

- PAGE 623 -

* * *

JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission ad-adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue.

The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

- PAGE 624 -

JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute.

- PAGE 643 -

* * *

THE CHAIRMAN: Do you have any further questions?

JUDGE GRAHAM: Yes, I do.

BY JUDGE GRAHAM:

Q Did you not form -- what is -- I don't know the precise name of it because I can't refer to my documents -- but what is commonly referred to as the Citrus County Jail Release Committee?

MR. BOSTIC: Objection, Your Honor. It's beyond the scope. If it goes to anything, it goes to one of his affirmative defenses, and it's not his case.

THE CHAIRMAN: I'll allow it.

JUDGE GRAHAM: It goes to bias and credibility on what this fellow did.

THE CHAIRMAN: I'll allow you to inquire until I see where he's going. The objection --

- PAGE 644 -

JUDGE GRAHAM: I would like the record to reflect --

THE CHAIRMAN: -- is overruled. You may answer the question.

JUDGE GRAHAM: -- that this individual right here --

THE CHAIRMAN: Judge, will you pay -- don't turn your back to me and make comments to the Commission. I have just ruled. The question is being answered. Please pay attention to me. Please answer the question.

JUDGE GRAHAM: The Commissioner said, "Jesus Christ."

THE CHAIRMAN: Judge, please. Judge, I'm asking you to pay attention to your questions of this witness and my rulings. His question is --

JUDGE GRAHAM: I would move for a mistrial based on the fact that this Commissioner has prejudiced the minds of the other Commissioners by making an explanation of "Jesus Christ." And that's exactly the way he did it --

THE CHAIRMAN: Well, I --

JUDGE GRAHAM: -- and I would move for

- PAGE 645 -

his disqualification.

THE CHAIRMAN: The motion for a mistrial is denied, and you may answer the question.

- PAGE 661 -

Q Have you ever contacted the committee on ethics -- the committee --

JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. And I object on due process grounds that this violates my fundamental right to due process and a fundamentally fair procedure where I am put under this type of an ordeal from nine in the morning until 7 o'clock at night with a 20-minute lunch break. And the statements of the Chair that I had other times to relax is not true. At all other times I was scurrying around trying to respond to implicit threats to put me in jail today.

Mr. Chairman, I have much more to get into with this individual. After ten hours -- more than ten hours -- and without

being allowed to prepare and without being allowed to get my deposition from this individual, I can't proceed. It's physically and procedurally impossible for me to proceed at this time.

THE CHAIRMAN: So noted. Judge, you are now released to return to your activities. I don't know if you're under subpoena by anyone else.

- PAGE 701 -

* * *

JUDGE GRAHAM: May I ask permission to note for the record that I do not have a continuing objection; that these are each individual objections?

THE CHAIRMAN: No. I am not going to delay the trial. You can make your motion at a later time. We are proceeding with the cross-examination of this witness. Please proceed.

JUDGE GRAHAM: May I ask permission to finish my federal due process objection?

THE CHAIRMAN: I have ruled on that. You are pushing me, Judge Graham, and I am getting ready to hold you in contempt, and I'm not going to warn you again. And if that's the case, I'm going to recommend incarceration for your activities of

disdain for this Chair, and it is not going to happen anymore. You will orderly proceed with the cross-examination of this witness. Now, please proceed.

* * *

- PAGE 708 -

* * *

JUDGE GRAHAM: May I approach the bench sidebar?

THE CHAIRMAN: No sidebar. What do you want?

JUDGE GRAHAM: I want to ask permission to have my assistant stand ready with a camera and take a picture of Ms. Barnes the next time she goes to sleep.

THE CHAIRMAN: You will not disrupt this court; and that statement is incorrect, and you will continue. And no one will be brought forward in here. Ask your questions.

JUDGE GRAHAM: Is that permission denied?

THE CHAIRMAN: Permission for anyone to come forward and take photographs is denied.

JUDGE GRAHAM: Permission for her to take the photographs --

THE CHAIRMAN: Anyone. Do you understand?

JUDGE GRAHAM: Not coming forward; to just take the picture while she is sitting there.

- PAGE 709 -

THE CHAIRMAN: There will be no pictures taken in this courtroom of any of the Commissioners by your personnel on this side of the bench -- I'm sorry, this side of the rail.

JUDGE GRAHAM: Permission for Ms. Baarsma --

THE CHAIRMAN: I am not going to argue the issue anymore. Please proceed. You are intentionally delaying this trial, and you are pushing my patience, Judge Graham. This is conduct you would not allow in your own courtroom, and I'm not going to allow it in this Commission hearing. So stop it and proceed with the case.

JUDGE GRAHAM: I would like to make a motion for a mistrial. I think you have --

THE CHAIRMAN: The motion for a mistrial is noted, denied. Please proceed.

JUDGE GRAHAM: May I ask permission to make a statement for the record on that?

THE CHAIRMAN: All right. I am holding you in contempt for delay of this case. I am going to suggest to you that you have continuously disregarded the instructions of the Chair; you have intentionally delayed this

trial; you have made demeaning remarks to the Chair; you have not been paying attention to my instructions for orderly presentation of this evidence.

I am recommending to the sitting Judge Yawn to come here and show reason to you why you should not be held in criminal contempt. I am going to ask for incarceration of you as soon as Judge Yawn can come here. We will take that matter up as soon as he can get here.

Now, you will proceed. And I suggest strongly that you get your counsel here to represent you.

Mr. Rhodes, come forward.

(Discussion off the record.)

THE CHAIRMAN: The contempt occurred here. The request of General Counsel is that I was talking about civil contempt. You have done it in the presence of the Commission, in my direct

presence; and I am going to ask for activity -- I mean, ask for the judge to so hold you in contempt.

Now, please proceed. That is one matter we will take up as soon as the judge gets here.

JUDGE GRAHAM: I'd ask permission for a

- PAGE 711 -

recess, because you've unnerved me, and I need a few moments to collect my thoughts.

THE CHAIRMAN: You will continue, please. If you are finished with your cross-examination, we will call the next witness.

JUDGE GRAHAM: I would like permission to make a motion for a mistrial.

THE CHAIRMAN: Make your motion.

JUDGE GRAHAM: I would move for a mistrial on this. These are the trier of fact, and you have made these statements threatening to put me in jail -- saying that you're going to ask to put me in jail. And at this point, it would be entirely unreasonable to expect these Commissioners to listen to my testimony or the testimony of my witnesses and believe them when you've made me out to be --

THE CHAIRMAN: Your objection is noted and denied. Please continue, Judge.

JUDGE GRAHAM: May I have permission to finish it?

THE CHAIRMAN: No. You have completed your objection. Please continue. You are not going to delay this trial anymore.

- PAGE 726 -

* * *

JUDGE GRAHAM: Permission to look through my files. I have a transcript of that proceeding.

THE CHAIRMAN: Please hurry, Judge. You're delaying the trial. I would appreciate it if you would have your documents ready. Please continue and get your documents. You need to make no comment. I'm giving you time to get the records, so please do it.

MR. BOSTIC: Judge Graham, is it a transcript of February 20th, '91, that you're looking for?

JUDGE GRAHAM: That's it.

MR. BOSTIC: It's in evidence as No. 3.

THE CHAIRMAN: Judge, it has now been three minutes since the last question. Do you have any further questions of this witness?

JUDGE GRAHAM: I ask permission --

THE CHAIRMAN: Do you have any further questions of this witness?

JUDGE GRAHAM: Yes, I do.

THE CHAIRMAN: Then ask the question now.

- PAGE 727 -

If not, he will stand down.

BY JUDGE GRAHAM:

Q You stated that --

JUDGE GRAHAM: May I make a due process objection, Your Honor -- excuse me -- Mr. Chairman?

THE CHAIRMAN: No. Not at this time. You may make an argument at a subsequent time.

I'm getting ready to dismiss this witness, Judge Graham. Are you finished?

JUDGE GRAHAM: I was just making a note so I would be able to make my proffer.

THE CHAIRMAN: I am now finding you once again in contempt of this Commission. The Court feels that your actions, attitude, and activities have been disruptive, scandalous, improper in this Commission hearing and contemptuous in nature, and I hereby charge you with contempt of this Commission.

And at this time I'm going to allow you, at a break, to get yourself counsel to have him here with you or her here with you so that when Judge Yawn comes forward and I make the motion for contempt, where I'm going to ask for incarceration of you, that you will have proper

- PAGE 728 -

representation. I will not delay the proceedings for you to get counsel at a later time. When we take a break, I suggest that you get yourself counsel to represent you.

Now, do you have any other questions of this witness?

JUDGE GRAHAM: I have one statement to make.

THE CHAIRMAN: Do you have any other questions of this witness?

JUDGE GRAHAM: Yes, I do.

THE CHAIRMAN: What is the question?

JUDGE GRAHAM: May I have a recess? You've unnerved me, and I need a recess --

THE CHAIRMAN: There is no recess.

JUDGE GRAHAM: -- to regain my composure.

THE CHAIRMAN: Are you finished with this witness?

JUDGE GRAHAM: No, I am not.

THE CHAIRMAN: Then ask the question.

* * *

- PAGE 763 -

* * *

Q You investigated the postcard caper rather closely, did you not?

MR. BOSTIC: Objection. Any relevancy. I think this area has been exhausted.

THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: May I proffer a response?

THE CHAIRMAN: At a later time, Judge.

JUDGE GRAHAM: Permission to just state federal due process on the record?

THE CHAIRMAN: You may do it later on, Judge.

- PAGE 796 -

* * *

JUDGE GRAHAM: Mr. Chairman, he has put Mr. King on the stand and said -- asked him the following question: Was there any favoritism or friendship with respect to the Denise Ortolano case? Answer: No.

Now, I'm going to put on the record of the Denise Ortolano case, the record of the brief on appeal. I give you notice that I'm going to request judicial notice of that appellate file, Mr. Bostic. Do you demand written notice?

MR. BOSTIC: No, I do not.

THE CHAIRMAN: By the way, Judge, if you get the files or copies of them, I think Mr. Bostic will cooperate with you, and I will take judicial notice.

- PAGE 797 -

JUDGE GRAHAM: I'm going to put judicial notice -- I'm going to have him take judicial notice of the appellate brief of -- it's not the Denise Ortolano file; it's the Kathy Clark file which contains all of the information about all of these cases.

Now, I have to submit to the Commission, the trier of the fact, which is also the prosecutor and investigator -- so I feel like I have to really convince them -- I have to present to them that brief which outlines all the favoritism, and I also have to have his sworn testimony, "Nope. There was nothing. Favoritism was not involved."

Now, what do I want to do? I want to establish a routine pattern or practice of many examples, before and after, where favoritism has been shown in the Citrus County court system. And that is highly corroborative -- excuse me one moment, please -- highly corroborative, collateral, and circumstantial evidence supporting my position to go to the trier of fact in determining who is telling the truth, Judge Graham or Brad King.

And that's why it's relevant. And to

deny that to me denies my right under the federal constitution to due process of law and to defend myself.

MR. BOSTIC: Before he should be allowed to open this wide door -- and he talks about things being collateral -- it must first be collateral to something. You can order the evidence --

order the presentation of the evidence, and courts frequently do. It is rare that in a trial you are allowed to prove your similar acts or your collateral before you have proved your underlying. He needs to prove first his underlying before the collateral or the similar so he can tell if it is collateral or similar to anything.

THE CHAIRMAN: I understand your arguments, both of you. What I am indicating I'm going to do on this is: I'm going to restrict the presentation of evidence to matters that deal with favoritism prior to 1991 and allow you to proffer items subsequent to them.

* * *

- PAGE 807 -

* * *

I had a third proffer that I needed to make. It had to do with a federal constitutional issue. I asked the Chairman, yourself -- I said, "Mr. Chairman, permission to proffer." "Permission denied." I believe, Mr. Chairman, that the denial of an offer of a proffer of a legal argument or of evidence is just absolutely reversible error. I don't think you can do that. It's -- if these proceedings are upheld by the appellate courts, I will be amazed. I hope -- I pray

to God that they aren't, because if other judges have to go through this, we do not have an independent judiciary anymore.

And you would -- you said, "No. You cannot proffer the argument."

THE CHAIRMAN: No. That's not true.

JUDGE GRAHAM: Strike that.

THE CHAIRMAN: Judge, I said --

JUDGE GRAHAM: Strike that.

THE CHAIRMAN: Judge, I said --

- PAGE 808 -

JUDGE GRAHAM: You said, "You cannot proffer it now. You can proffer it at the end." I stand corrected.

And in the middle of all these complicated proceedings -- after nine hours Monday, ten hours yesterday, and however many hours this morning -- I said, "Mr. Chairman, may I make a brief note so that I can remember it?" And the Chair denied me that opportunity.

And here -- I'm going to -- Madame Clerk, mark this as exhibit -- what exhibit are we up to?

THE CLERK: 17.

JUDGE GRAHAM: Exhibit 17.

(Respondent's Exhibit 17 marked for Identification.)

JUDGE GRAHAM: These are the notes I was taking. Item three here, where I wrote "Need" -- and I started to write the rest of the legal argument that I needed to make, and you cut me off. You would not let me do it.

And this is after telling me -- after charging me with contempt and telling me you were going to ask to put me in jail, you told me that. You said, "I'm charging you with

- PAGE 809 -

contempt. I'm going to ask them to put you in jail." And after telling me that, you wouldn't even let me make a note of a proffer that you wouldn't let me make in the hearing. And now I don't know what it is. I honestly don't know what it is.

I've got -- one, two, three, four, five, six -- six notes of proffers you said I could do. This is number three, and it's totally blank, and I'm going to introduce it into the record for the purpose of appeal. Do I have permission to do that?

THE CHAIRMAN: You can have it marked for identification.

JUDGE GRAHAM: May I have it marked into evidence for the purpose of this proffer?

THE CHAIRMAN: Into evidence?

JUDGE GRAHAM: Yes.

THE CHAIRMAN: You can have it marked for identification.

JUDGE GRAHAM: Okay.

Now, that was a further violation of my fundamental rights of due process under law guaranteed by both θhe federal and state constitution. When this hearing, that's been

- PAGE 810 -

held by the investigators, the prosecutors, and the quasi-judge, gets to the point where I'm not even allowed to make a note, it's blatantly clear that there is no due process involved in these proceedings.

And I will point out for the record that at one point you were timing me. You were timing me. You were saying, "You took three minutes to write that note." That was with respect to, I believe -- I'm not certain -- item four.

Now, I'll read to you -- and you made some comment implying --

THE CHAIRMAN: Judge, let me interrupt you. I am not going to keep the court reporter here all day. She needs to take a break, and so does the bailiff and the clerk. I was going to give you 15 minutes, and now we're almost a half hour into your proffer, and -- you know, there's got to be a reason -- if you're going to make an argument on items that you've not touched on, you may do so; but I am going to leave them go in three minutes, and then we'll come back, and then we'll -- later on in the day you can continue your proffer, because I'm

going to let these people go to lunch.

JUDGE GRAHAM: Mr. Chairman, later on in the day I will not remember all of these complicated issues of constitutional law and legal theory. Not after another --

THE CHAIRMAN: Do you want an hour for lunch?

JUDGE GRAHAM: I want -- excuse me. Am I allowed to tell you what I want?

THE CHAIRMAN: The question is: Do you want an hour for lunch?

JUDGE GRAHAM: I'm not going to have an hour for lunch under any circumstances. I'm going to be --

THE CHAIRMAN: I am going to allow them -

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: Mr. Chairman --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: --may I ask you the courtesy of not --

THE CHAIRMAN: Judge, don't argue with me. I'm taking into consideration the personnel in this court, and I'm going to give

you five minutes to finish your argument on whatever you want to argue on.

JUDGE GRAHAM: I cannot do it in five minutes. I make a further objection on the basis of due process of law.

THE CHAIRMAN: Well, I'm going to give you five more minutes, and then we can do it later on.

JUDGE GRAHAM: Later on -- I will be unable to do it after another six hours of these proceedings, and I will have lost my arguments. I would have not been able to perfect my record on

appeal for the federal courts to review what my arguments were; and what you're basically doing, Mr. Chairman, is you're preventing me from preserving my record on appeal to establish the legal basis for these very serious constitutional issues whereby prosecutors, investigators, and the triers of fact all combine into a process to remove an elected public official. This is very serious business.

I would submit to you, Mr. Chairman, that this is the real problem. The real problem is that you have DCA judges, circuit judges,

- PAGE 813 -

county judges and influential people and yourself, and you all have dockets to go back to on Monday -- or most of you do -- and that you don't want me to have the time to litigate an extremely complicated case in which I have told you there will be hundreds of witnesses and thousands of documents.

This Commission does not want to take the time to try this case properly. It wants me to come in here, it wants me to put a blindfold on, smoke my last cigarette, and get executed. And by gosh, they want me to keep my mouth shut; they want me to go

right along with everything, nod my head, and I suppose at the end get up and say, "Gee, there's the evidence. I'm guess I'm a pretty bad guy." That's the impression I'm getting.

And they cannot stand the fact that a judge has the courage to simply insist on due process of law and the right to bring in the evidence he has to support the fact that he hasn't done anything wrong. And you don't want -- every time you get upset with me it's because I'm making points in this court -- hearing room. When I start

making points and I start showing I'm right -- just like my opening statements. I was not allowed to even make my opening statements. Forty minutes for forty-one charges; less than sixty seconds to explain my opening charges.

And I have never had an opportunity, ever, to tell my side of the story in this case, ever. Why? Because I don't try my cases in the newspaper. I try them in the hearing room. I have waited my turn to tell my side of the story, and the first time -- after all of this negative publicity; being removed for false reasons from the criminal bench; all of these editorials; all of these name-callings;

all of these insults; everything that I have endured -- I finally get an opportunity for the first time to tell my side of the story in this case on opening statements. And you know what bugged the Commission? What bugged the Commission was they were beginning to hear the other side of the story, and they were realizing for the first tie, "Gee, you know, maybe this guy has a point here." And you wouldn't even let me finish. And this whole thing with Denise

- PAGE 815 -

Ortolano. The Commission had to stop and let me have Mr. King go out and proffer the relevancy of where I was going. If I had been allowed to continue with my opening statement, I would have told them what the evidence wold show, and the Commission would already have known that. And that's yet another example where I'm being charged with delays caused by the fact that the Commission doesn't want to take the time to just be fundamentally fair with me.

I object to all of this. This hearing has no semblance to justice. It has no semblance to due process. I'm being completely railroaded, and I am completely -- if I can do this well under these

circumstances, I just ask you and the public and the appellate courts to think how well I would do if you would let me defend myself. End of argument.

- PAGE 843 -

* * *

THE CHAIRMAN: What date is this dealing with, Judge Graham? Is this before or after February, '91?

JUDGE GRAHAM: This goes to bias and prejudice.

- PAGE 845 -

* * *

Q Isn't it true, Mr. King, that your office refused to represent the State in the case of -- the appeal of State v. Floyd? If it will help you with your recollection, this is the individual who came into court and said, "Yep. I ran the stop sign because I was in a drug neighborhood, a black drug neighborhood" -- his words, not mine. I'm just being accurate. "I was in a black drug neighborhood. I was buying dope, and I ran the stop sign on purpose because I was afraid somebody would hurt me."

Did your office refuse to represent the State in the appeal of that case?

MR.BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Sustained. Outside direct. Please proceed, Judge. Judge, I am going to have the witness stand down. I believe you've finished your cross-examination. Is that correct?

JUDGE GRAHAM: No, Mr. Chairman.

THE CHAIRMAN: I have been sitting here

- PAGE 846 -

patiently waiting for you to ask your next question, and I am now going to suggest to you that I am going to finish the cross-examination unless you move along with the proper procedure, asking questions, and quit delaying in this courtroom.

Now, I want to get this witness done, and I have already ruled that you cannot go into anything on the impeachment or bias because you've covered that ad nauseam. You cannot go into areas of bias -- I'm sorry, undue influence -- except for one more matter. You have already dealt with two of them. So unless you limit your questions in that area, we are going to conclude the cross-examination of him pursuant to my ability under 90.612. And then if you have any proffers, you will make the proffers with Mr. King. And,

Mr. King, I'm going to ask you to return later in the day, because we are going to continue with taking testimony here.

JUDGE GRAHAM: May I confer with co-counsel?

THE CHAIRMAN: Yes, sir.

(Discussion off the record.)

- PAGE 847 -

JUDGE GRAHAM: I register a federal due -- excuse me -- a federal objection based on not allowing me to -- my rights to confront the witnesses against me.

THE CHAIRMAN: Objection is noted.

* * *

- PAGE 938 -

* * *

JUDGE GRAHAM: The objection is I took his deposition, a 14-hour deposition, just last Saturday -- it was Friday. I have my calendar. One moment.

I just took it January 22nd. That was --

THE CHAIRMAN: Last Friday.

JUDGE GRAHAM: -- last Friday. And it was a 13-hour deposition, and I've been unable

- PAGE 939 -

to obtain the transcript, and I will suffer the same problems I had with the previous witness. Without the deposition transcript, it makes it -- it violates my right to confrontation of the witnesses, which I have pursuant to both the federal and state constitutions.

THE CHAIRMAN: Did you expedite the transcript?

JUDGE GRAHAM: I do not have the financial resources to expedite a 13-hour deposition, Mr. Chairman.

THE CHAIRMAN: I understand, Judge. I note your objections, and your objections are overruled. Please call the next witness.

- PAGE 1140 -

* * *

JUDGE GRAHAM: First of all, I stand corrected. I apologize to the Commission if I said Ms. Friedrich's deposition was ten days ago when it was 30 days ago, because -- in all this confusion, in 81 depositions, that was an honest mistake, okay, and I did not mean to mislead anyone.

I object to this individual for the same reason; that I don't have his deposition transcript, and therefore, I'm being denied my

right under the federal constitution and the state constitution to effectively confront the witnesses against me.

THE CHAIRMAN: The objection is

- PAGE 1141 -

overruled. We may proceed here, please.

* * *

- PAGE 1290 -

JUDGE GRAHAM: I would object to the calling of this witness. This is yet another example of the prejudice that the JQC has placed me in because of -- by not allowing me the proper time to prepare. I took the deposition of Ms. Suzanne Smith, and it is my information that this deposition has still not been transcribed; thus it is interfering with my federal-constitutional-protected right to the confrontation of witnesses.

THE CHAIRMAN: When was the deposition taken, Judge?

MR. BOSTIC: My records indicate December 31st. I think it was December 31st at 5:30 actually.

THE CHAIRMAN: The objection is overruled. Let's call the next witness.

* * *

- PAGE 1466 -

* * *

THE CHAIRMAN: Yes, Judge Graham?

JUDGE GRAHAM: The Chair gave me permission to reserve and make at the end of the proceedings an objection to the discovery being cut off.

THE CHAIRMAN: Yes. Go ahead and do that, please.

JUDGE GRAHAM: I make that objection based on federal due process grounds that -- with the enormity of the number of charges and the close of pleadings just December 31st, that I should be allowed to continue discovery.

THE CHAIRMAN: As I indicated, the trial has started. If you file the proper petition with us and it warrants discovery, we'll consider it.

- PAGE 1479 -

* * *

JUDGE GRAHAM: I would first make a motion for a mistrial under the decisional

- PAGE 1480 -

authority of the --

THE CHAIRMAN: I'm not going to take a motion for a mistrial. You reply to the issues that have been raised here. Please let me know what your feelings are on the recommendations of the State's Attorney about the four witnesses.

JUDGE GRAHAM: My reply to the recommendation of the State's Attorney about the four witnesses is that I am greatly alarmed that some type of ex parte communication must have taken place between the Chair and Mr. King based on the Chair's statements.

Mr. Ridgway's testimony -- he is subpoenaed. He is under valid subpoena of the court -- excuse me, of the Commission. This is a case of constitutional magnitude denying the right of the people of Citrus County to elect the public officials of their choice.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: It is a matter --

THE CHAIRMAN: -- I am not going to take that argument. I am talking about scheduling.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: You may go to that issue,

Judge. Do you have a problem in working out a time reference with these witnesses?

JUDGE GRAHAM: Yes, sir. My case has been totally turned on its head already by the Motion Committee's rulings on my approximately 1,100 items of evidence, and to further interfere with my presentation of my defense the way I planned it would be a further denial of my due process rights under the federal constitution. I demand to call Mr. Ridgway for his testimony today.

THE CHAIRMAN: All right. Mr. Bostic, do you have any argument?

MR. BOSTIC: No, I don't.

THE CHAIRMAN: All right. Unless there is further evidence to be presented that is different than what I've heard already, the ruling of the Chair will be -- is that Mr. Ridgway will either be called Thursday morning or Wednesday p.m. after 1 o'clock and that, Judge Graham, you will give reasonable notice to that.

Secondly, that Ms. Osmond and -- how do you pronounce the other witness? Judge, let me ask him a question. What's the other witness'

* * *

JUDGE GRAHAM: I would like to ask for a rehearing on the dispositions for the motion in limine for the legal reasons that the rules provide that after formal charges are filed -- that all further proceedings are to be public and that the Commission's adoption of the Motion Committee's rulings on my motion in limine were made without my presence, ex parte, and denied my due process rights guaranteed by the federal constitution.

- PAGE 1493 -

* * *

JUDGE GRAHAM: I would also make an objection at this time, based on due process of law, that the rulings of this Commission on what evidence I may present are so convoluted and complex that I can honestly state to you, Mr. Reiter, that I really -- I am going to be proceeding in great fear of not being able to comply with them, because they are so complicated and complex and convoluted that I don't understand them.

* * *

- PAGE 1598 -

* * *

THE CHAIRMAN: The question is -- Judge Graham, you listed nearly 450 witnesses; and if Mr. Harp is not named in that list, I'm not going to allow him to testify, especially due to the fact that he has already testified and you had extensive cross-examination of him.

JUDGE GRAHAM: Mr. Reiter, I object on due process of law. This Commission --

THE CHAIRMAN: That argument is noted. I made my ruling. Please proceed.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: Judge Graham, may I suggest to you it is not necessary nor is it proper for you to be thanking the Chair as to its rulings, and I do not appreciate that. So please do not be thanking me. Okay?

JUDGE GRAHAM: Mr. Reiter, may I share with you --

THE CHAIRMAN: No.

JUDGE GRAHAM: -- a legal periodical that says that is the proper procedure, for an attorney to always thank --

THE CHAIRMAN: I am the Chair of these

proceedings. You don't need to say that. Okay? I will presume that you thank me on every occasion. You do not have to say that.

JUDGE GRAHAM: May I --

THE CHAIRMAN: Who is the next witness?

JUDGE GRAHAM: May I --

THE CHAIRMAN: No further comment.

- PAGE 1887 -

* * *

JUDGE GRAHAM: Mr. Reiter, I formed an

- PAGE 1888 -

opinion based on my experience. Unlike Judge Taunton, I didn't take names and numbers. If I had have, he would have charged me with that. Having not taken names and numbers, I was basing it on two or three incidents, one of which you wouldn't allow me to prove, and my general understanding. And now I want to show through circumstantial, corroborative evidence that that was going on. And the Commission's insistence that it's only the names -- only the particular names that were in my head proves that I did it responsibly is not correct. All right?

I did not -- it was never my understanding that as a part of my right to free speech -- that before I said that attorneys and doctors and influential people got their cases reduced -- it was never my understanding to exercise that right to free speech that I would have to prove name, number, driving record. And the Commission is preventing me from showing circumstantial evidence that it goes on all the time.

THE CHAIRMAN: All right. Judge, let me suggest to you that the two allegations in B

- PAGE 1889 -

and C of Count 1 says, quote, that you allegedly stated this: "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving basically because they are doctors and lawyers."

If you have evidence of that, I'm going to allow that into evidence. But is' where you say here "I know of attorneys" --

JUDGE GRAHAM: That's right.

THE CHAIRMAN: If you don't know of attorneys at the time that you made that statement on September 15th, 1988, I don't find that it's material. I understand what you're saying.

JUDGE GRAHAM: I knew of them. I just didn't know their names and driving record numbers. This is -- you know, you sit there, and hundreds of cases go through the courts. You don't take their names and --

- PAGE 1951 -

* * *

JUDGE GRAHAM: I would like to state for the record that I would renew all of my objections that I made yesterday and add that they were also based on the federal constitution and my federally protected rights to due process of law and would like an order

- PAGE 2094 -

* * *

JUDGE GRAHAM: At this time I'll tender into evidence Exhibits No. 190 and 192. Those are the depositions of Judge Beauchamp and former Justice Raymond Erlich.

THE CHAIRMAN: Okay. They're going to be accepted. Let me ask you a question, Judge. Are they -- is this opinion testimony on -- what?

JUDGE GRAHAM: This is strictly to preserve the federal constitutional issue of

the vagueness of the code, which has been agreed upon by counsel.

THE CHAIRMAN: Then we'll accept that as a proffer into evidence. It's authenticated, et cetera, but that is not an issue that we're resolving, as you well know.

JUDGE GRAHAM: No. But Mr. Bostic has stipulated that it would be into evidence. I'm not going to argue it as evidence, but it will be in evidence for the purpose of federal appeal. That's what the stipulation of counsel is.

THE CHAIRMAN: All right. Well, the stipulation will go in, but I -- the Commission has ruled on this.

JUDGE GRAHAM: I will not argue it.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: Over objection I will not argue it, but I will not argue it. And tomorrow I will have the deposition of former judge Harry Lee Coe as Exhibit 191 to introduce.

* * *

- PAGE 2144 -

* * *

THE CHAIRMAN: Well, in either event, your personal observation is not material to the issues. Secondly, you have not been tendered as an expert. You've indicated you don't have the qualifications. So on both grounds, I'm going to sustain the objection.

JUDGE GRAHAM: I renew all my objections to these proceedings based on due process of law under the federal constitution and would ask my next question.

* * *

- PAGE 2181 -

* * *

JUDGE GRAHAM: Mr. Chairman, I want to renew my objection to the triers of fact continuing to impeach my witnesses. It's a

- PAGE 2182 -

prejudice, and I would move for a mistrial again.

THE CHAIRMAN: The motion is denied. Please continue, Judge.

JUDGE GRAHAM: And preserve a federal objection on appeal to due process rights.

THE CHAIRMAN: No. You made your objection.

- PAGE 2261 -

* * *

THE CHAIRMAN: And when I say "your closing," it's whether you or your attorney makes it. I'm not going to give any extra -- the Commission is not going to give any more time other than the two and a half hours. So if he interjects himself in there, he's using your time.

- PAGE 2262 -

JUDGE GRAHAM: I understand. Do you realize that that is approximately only four minutes per charge?

THE CHAIRMAN: Well, we know what it is, and we --

COMMISSIONER GILLMAN: 5.76.

THE CHAIRMAN: Judge, that is a -- we feel that the totality of the time, two and a half hours, is more than reasonable for you to make your closing statement.

JUDGE GRAHAM: May I ask --

THE CHAIRMAN: We're not going to argue that point. That's the decision. Now, you may ask me for clarification on anything you want to ask.

JUDGE GRAHAM: I would object -- I understand; I will comply. I would voice my objection based on the due process rights afforded by the federal constitution and state that this denies me a fundamentally fair forum in which to explain this extremely complicated case involving hundreds of documents and perhaps as many as -- I don't know. How many witnesses did we call -- 50 witnesses. It cannot be done fairly, and I would preserve

- PAGE 2263 -

that federal objection.

THE CHAIRMAN: Your objection is noted, Judge.

* * *

- PAGE 2278 -

MR. BOSTIC: I would concede that it is inaccurate.

THE CHAIRMAN: Okay. Thank you, sir.

JUDGE GRAHAM: Mr. Chairman, I have a statement I want to make about the way I'm going to proceed. It's a very important

statement for the purposes of appeal, and I would like permission --

THE CHAIRMAN: Go ahead. Make your statement.

JUDGE GRAHAM: I just wanted to make it very clear to the appellate courts about why I am proceeding over the next two days in the way I am proceeding, because I don't want them -- I don't want the JQC or the State of Florida saying, "Well, Judge Graham, you know, called his last witness at one o'clock. He could have gone on to five or six. Obviously he didn't have any more witnesses to call." I don't want them to think, "Well, why didn't he publish all the documents to the Commission?"

I want the appellate courts to understand clearly that I have been told by the Commission -- Mr. Chairman -- that "We will do this in four days, we will be finished at the end of

Friday, and you will complete your case by the end of Friday."

Given that, and over my objection, I am now presenting the case the way I am, only trying to make the best of what I consider to be a bad proposition. And I don't want the -- I want the appellate courts to understand that I consider this to be a six-month

case, I consider it to be a case of constitutional magnitude, and that if I were allowed the time to present this case properly, I certainly would not conduct myself in the way that I'm going to in the next two days. I would do everything that is fit and proper to the defense of my case.

THE CHAIRMAN: All right, Judge. You may proceed.

MR. BOSTIC: If I could say one thing in response to that, and that is that the Chair's ruling also included that Judge Graham could call any factual witnesses he chose to call concerning the 26 allegations left against him.

THE CHAIRMAN: All right. That's enough on this.

JUDGE GRAHAM: That's true, and I will

- PAGE 2326 -

* * *

JUDGE GRAHAM: I object to the continuing adverse impeachment of my witness -- my character witness -- by the trier of facts, and I would move for a mistrial.

THE CHAIRMAN: Your motion for a mistrial is denied, and I don't look at these questions as adverse questions.

JUDGE GRAHAM: And I object based on the due process rights --

THE CHAIRMAN: I don't look at them that way.

JUDGE GRAHAM: -- of the federal constitution.

THE CHAIRMAN: I understand that, Judge.

- PAGE 2338 -

* * *

Q Could you start with 1987 and share with the Commission the civic activities that I have engaged in as a Citrus County judge? Just the date and a brief description of what it was.

MR. BOSTIC: Excuse me, Your Honor. If

- PAGE 2339 -

he's going to have this witness start at 1987 and go through these two files and give a brief description of everything he does, I believe that would be redundant. I would be willing to stipulate he's been very active in the community.

JUDGE GRAHAM: A stipulation doesn't go to the weight. Saying I've been very active is very different than this Commission taking ten minutes to hear everything that has been done.

THE CHAIRMAN: Well, Judge, we're going to read those documents, and we're going to go through each and every one. I'll let her do '87 as an example of all the other years. You can do 1987?

JUDGE GRAHAM: I object on the basis of due process of law --

THE CHAIRMAN: Your objection is noted, Judge.

JUDGE GRAHAM: -- guaranteed by the federal constitution.

* * *

- PAGE 2346 -

COMMISSIONER GILLMAN: In 1990 Judge Graham ran for reelection, did he not?

THE WITNESS: yes, sir.

COMMISSIONER GILLMAN: How many opponents did he have?

JUDGE GRAHAM: Objection. What is the relevancy of this with respect to -- it exceeds the scope of direct if nothing else.

THE CHAIRMAN: Well, the inquiry is very broad for the Commission members, and I'm going to allow the question to be asked and answered.

JUDGE GRAHAM: I preserve my federal objection on appeal, due process of law. The Commission is becoming an interrogator of my witness.

- PAGE 2358 -

* * *

JUDGE GRAHAM: Mr. Commissioner, at this time I wanted to make a mistrial based on the following conduct:

During the testimony of Mr. Cury, I asked the question, "Does a leopard change his spots?" One of the Commissioners said, "Yes," and that is why Mr. Cury responded to that, and he was the person that Mr. Cury was saying -- in response to what that gentleman said.

That is an obvious showing of bias and prejudgment of me and -- not only shows his bias and prejudgment, but it affected the other members of -- the triers of the fact who are supposed to be impartial, and I would move for a mistrial.

THE CHAIRMAN: Your motion is denied. Please continue.

- PAGE 2359 -

JUDGE GRAHAM: And I would preserve my federal objection to due process of law.

- PAGE 2440 -

* * *

JUDGE GRAHAM: I'm doing this only to preserve my record on appeal.

THE CHAIRMAN: Well, that witness will be handled during our proffer at such times as we

- PAGE 2441 -

work out the scheduling.

JUDGE GRAHAM: And I would object to the fact that I'm not allowed to call Mr. Wright. I object that the motion restricting me was heard without a hearing, ex parte.

THE CHAIRMAN: Judge, you argued that to me last Thursday, and it's noted in the record. Is there any more evidence to be presented on your behalf other than the proffer that you talked about?

JUDGE GRAHAM: Permission to just state federal due process of law.

THE CHAIRMAN: You stated it.

JUDGE GRAHAM: At this time I would introduce into evidence Exhibit No. 191.

THE CHAIRMAN: Which one is that, Judge?

JUDGE GRAHAM: This is the deposition of State Attorney Harry Lee Coe.

THE CHAIRMAN: That was stipulated to, Mr. Bostic?

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: By the way, Judge Graham and Mr. Bostic, when the Commission reviews these depositions, we are to presume that any objections in there that have been made have

- PAGE 2442 -

been withdrawn. Am I correct?

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: That will be admitted into evidence.

(Respondent's Exhibit 191 admitted into evidence.)

JUDGE GRAHAM: Judge Graham, under great protest and preserving his rights to federal due process objections, concludes his case.

* * *

- PAGE 2448 -

* * *

JUDGE GRAHAM: Yes. First of all, I have a separate objection based on the fact that the Chair made its ruling and that County Judge Gillum --

COMMISSION GILLMAN: Gillman.

JUDGE GRAHAM: -- Gillman motioned to the Chair, asked for a hearing on this, and that does not show the cold neutrality required of the triers of fact. And I would object to that based on the federal constitutional provisions

- PAGE 2449 -

for due process of law for a fundamentally fair trier of fact.

- PAGE 2483 -

* * *

JUDGE GRAHAM: No argument. A motion for a continuance.

THE CHAIRMAN: Motion for a continuance is denied. Go ahead and bring the witness in.

JUDGE GRAHAM: Permission to state the basis?

THE CHAIRMAN: Pardon?

JUDGE GRAHAM: Permission to state the basis?

THE CHAIRMAN: No. There is not going to

- PAGE 2484 -

be a continuance.

JUDGE GRAHAM: Permission to preserve my federal due process objection on the basis --

THE CHAIRMAN: You've done that in the past, and there's no need for further argument.

- PAGE 2536 -

Q Do you know which one of the bailiffs or deputies told him that?

A No, I don't.

MR. BOSTIC: Okay. I have no further questions.

THE CHAIRMAN: Mr. Tate.

COMMISSIONER TATE: Ms. Baarsma, you've been here for most of this trial, have you not?

THE WITNESS: Yes, I have.

COMMISSIONER TATE: Were you here when the rule was invoked?

THE WITNESS: When the what?

COMMISSIONER TATE: Rule was invoked. When the sequester order was ordered.

THE WITNESS: Yes. I complained to them about --

COMMISSIONER TATE: Did you understand -- excuse me. Did you understand what that order was?

THE WITNESS: That if you were a witness, you were not supposed to be at the hearings.

COMMISSIONER TATE: So you really had a full understanding about that.

THE WITNESS: As far as I could understand it.

- PAGE 2537 -

COMMISSIONER TATE: Did you advise Judge Graham that you saw Ms. Miller --

THE WITNESS: Yes. I --

COMMISSIONER TATE: -- the day that you saw her?

THE WITNESS: I came and advised him that there were witnesses in there --

COMMISSIONER TATE: No. I'm asking specifically --

THE WITNESS: Things were going on in the courtroom.

COMMISSIONER TATE: -- did you advise him about Ms. Miller?

THE WITNESS: I told him some of the people that I had seen. I don't know -- Ms. Miller I only saw there one time, and I took her picture. I don't know if -- the first time I told him, I don't think I said Ms. Miller, no.

COMMISSIONER TATE: That picture is a month old. Did you show him the picture the same day that it was developed?

THE WITNESS: I didn't develop it. It wasn't my camera.

COMMISSIONER TATE: All right. Did you

mention to the judge --

THE WITNESS: I took pictures --

JUDGE GRAHAM: Excuse me. I object.

COMMISSIONER TATE: -- that you saw Ms. Osmond? I'd like to --

JUDGE GRAHAM: I would just like to voice an objection.

THE CHAIRMAN: Judge, let him ask the question before you do your objection.

COMMISSIONER TATE: Ms. Baarsma, did you mention to the judge that you saw Ms. Osmond in the room the same day you saw her?

THE WITNESS: Yes. One of the days I did, yes.

COMMISSIONER TATE: So Judge Graham knew that this witness that was ordered to be sequestered was watching the proceedings on television, and you told the judge the same day you saw the witness.

JUDGE GRAHAM: Objection. I would -- Mr. Tate -- is that correct?

COMMISSIONER TATE: That's my name.

THE CHAIRMAN: It's Mr. Tate.

JUDGE GRAHAM: Mr. Tate has not grilled Ms. Osmond or Ms. Miller on these subject

matters, and I object that this shows the obvious bias -- and I object that this shows the obvious basis and prejudice of the Commission. And I would again object on the basis of due process of law. These people who investigated and filed the charges against me now are very upset. They want to impeach my witnesses but not the witnesses of Mr. Bostic, and I renew my federal objection.

THE CHAIRMAN: Your objection --

THE WITNESS: I would --

THE CHAIRMAN: Excuse me, ma'am. One second. Your objections are noted. There is no legal grounds for your objection, so the objection is overruled. Will you answer the question, ma'am?

THE WITNESS: Yes. I would like to remind Mr. Tate, for one thing, that when we came -- there was a lot of confusion going on here, and you were threatening to put Mr. -- Judge Graham in jail. And so going in and out and seeing the witnesses and move -- there was so many things going on, it was just basically a blur as to exactly when exactly which things happened, but I have no doubt as to exactly

JUDGE GRAHAM: Would you find that, because we'll probably need both of them.

THE CLERK: Yes.

THE CHAIRMAN: Okay. Let's proceed. Anything else?

JUDGE GRAHAM: Yes. Ms. Miller has said that I'm bizarre. Ms. Miller has said that Judge Douglas and Judge Agner

are bizarre. It would be incredibly persuasive evidence for me to put on two professional judges to sit there and give their --

THE CHAIRMAN: But, Judge, I don't want to try that. We're only concerned about you here and her bias. I mean, we're going to weigh her credibility. I don't think you need to put those folks on. I'm not going to allow that. We're going to just allow the Campbell transcript and a very short two rebuttal witnesses. Let's move. Okay?

JUDGE GRAHAM: I would like to preserve my due process --

THE CHAIRMAN: Your objections are noted.

JUDGE GRAHAM: -- based on the federal constitutional right to due process of law.

THE CHAIRMAN: Okay.

- PAGE 2660 -

* * *

JUDGE GRAHAM: Yes, they are. But Mr. Chairman, Mr. Tarquin is here.

THE CHAIRMAN: Okay. I've told you I'm not going to allow Mr. Tarquin. Judge Demers?

- PAGE 2661 -

COMMISSIONER DEMERS: Can we take a short recess, please?

THE CHAIRMAN: For the purpose of my ruling?

COMMISSIONER DEMERS: Yes, sir.

THE CHAIRMAN: No. I'm not going to change my ruling. Let's do this quickly, Judge. Let's bring the person in.

JUDGE GRAHAM: I would object on the basis of federal due process rights.

THE CHAIRMAN: You've got it. Let's call the next witness. Remember, Judge, only as to the Gurrola matter.

- PAGE 2675 -

* * *

JUDGE GRAHAM: Mr. Chairman, I would very respectfully state that I would rather call more witnesses, but at this time, based on the Chair's rulings -- I would prefer, for the basis of the record, if you would just tell me that I can't call any more individuals.

THE CHAIRMAN: I've told you what the restrictions are. Do you rest now?

JUDGE GRAHAM: No -- well, I don't want to violate any of your rulings.

THE CHAIRMAN: All right. You know what my rulings are.

JUDGE GRAHAM: I have no one else to call that would not violate what you have indicated

- PAGE 2676 -

to me that you were only going to allow me to do. Let's put it that way.

THE CHAIRMAN: With that understanding, with that ruling of the Commission, is there anything else?

JUDGE GRAHAM: No, sir.

THE CHAIRMAN: All right. Then you rest?

JUDGE GRAHAM: I rest under protest, yes.

* * *

- PAGE 2721 -

* * *

JUDGE GRAHAM: And with that I would note that at this time, if I had been allowed to make the proffers -- there would be a great number of other objections that I would note at this time,

but quite frankly, they were lost, and I'll never know what they were, and neither will the appellate court.

So I just hope that in reviewing the record they will take a certain amount of latitude with the fact that perhaps I was not able to preserve everything as well as I had wanted.

* * *

Excerpts

from

The Transcription of the Pre-trial Conference

* * *

THE CHAIRMAN: All right. Let the Chair suggest that the areas that the Chair and the Motion Committee and the Commission would like to have discussed here are the affirmative defenses that deal with the fact that the Code of Judicial Conduct is unconstitutional; that the Commission is unconstitutional; that there is selective prosecution; and that the charges are brought against the judge as a result of a conspiracy by political enemies. Those four areas.

First of all, as to the arguments on the constitutional basis of this Commission or the code itself, be mindful -- and, Judge, I want to explain to you -- this Commission is a hearing body. It is not a body that has general jurisdiction, as you well pointed out to me on several occasions. And all we can do is pass upon charges that are made, as to

whether they have any basis in fact, and to make recommendations to the Supreme Court. We do not have -- the Commission does not have the power to rule on its constitutionality or on any other

law that -- whether or not it's constitutional. And what you're asking us to do is outside our purview in that affirmative defense, I would think.

And secondly, to hold ourselves unconstitutional -- that is another thing that is not within our purview. Certainly the Supreme Court of Florida or the federal court or the United States Supreme Court or any other court with jurisdiction over these proceedings would resolve that issue, but we do not have that power to resolve whether the code is constitutional or whether the Commission is constitutional. On the contrary, that has been adjudicated on other occasions and has been resolved, so it's just not an issue.

The issue as to selective prosecution and the conspiracy -- in that area -- the selective prosecution, once again, is not a legal argument that is something the Commission can rule on. It is a matter that -- if there is

such an argument, that it would be -- the Supreme Court of the State of Florida, in reviewing whatever reason you're giving for selective prosecution, would make the ruling. All we are passing

on is whether there is any factual basis whatsoever to see that -- to find out whether you have violated any code provisions of the Judicial Code of Conduct, and if you have done so, whether or not there should be any recommendations. And that's really what the Commission should be doing, and that's our limited area. And so what I need for you to tell me is how do I declare -- or this Commission declare itself unconstitutional, how do we declare that the code is unconstitutional, and how do we rule on matters of law that the Supreme Court really should be handling.

JUDGE GRAHAM: May I answer?

THE CHAIRMAN: Sure.

JUDGE GRAHAM: First of all, I object to the Chair suggesting what affirmative -- suggesting to Mr. Bostic what affirmative defenses he should move to strike. It's evidence of a prejudgment of the issue that

we're about to argue.

I object to you having made all these statements before hearing my argument. I think that these statements should have been reserved after due deliberation and after hearing my argu-

ments. And it's further proof of the unconstitutional nature of this Commission that you would engage in these two types of statements at this motion in limine.

Second, I would argue that this motion in limine should not be heard now. I was not noticed that it would be heard today. It involves extremely complex matters of constitutional law. I came in here expecting Mr. Bostic to talk about certain witnesses that he wanted to object to, and now I find myself placed in a position of trying to argue complex issues of constitutional law, which I was totally unprepared to do, because this was not noticed for hearing today; and also based on the fact that I did not believe the Motion Committee would be here for me to argue it to, and, indeed, they aren't.

THE CHAIRMAN: So you are saying that you had inadequate notice -- well, you didn't have

notice at all. Is that what you're --

JUDGE GRAHAM: I had no notice. The first notice I had that we were going to be arguing this motion to dismiss was when the Commission -- Mr. Bostic announced it some five minutes ago.

THE CHAIRMAN: All right. That is proper grounds for argument, and if you are not prepared to argue the motion in limine, I will not allow that to be argued; but I will deal with the materiality and relevancy of witnesses to be called and issues to be raised by these witnesses. So why don't we go to those issues.

JUDGE GRAHAM: Now, may I finish my response to your statements?

THE CHAIRMAN: I've already ruled on that, Judge.

JUDGE GRAHAM: I understand.

THE CHAIRMAN: Let's move on to -- what I want to talk about is the necessity of the witnesses and any evidence that is going to be presented by you or Mr. Bostic.

JUDGE GRAHAM: Okay. Point of clarification.

THE CHAIRMAN: Go ahead.

- PAGE 28 -

JUDGE GRAHAM: May I respond to your statements about the Commission not having the jurisdiction so that I can preserve it?

THE CHAIRMAN: No, you may not. No, you may not. Because you have already said--

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: -- that is not an issue to be resolved.

JUDGE GRAHAM: I just want to preserve it for the record at this point so the federal courts would know it.

* * *

- PAGE 95 -

* * *

THE CHAIRMAN: We were going to talk about the last series of witnesses that were not discussed earlier.

JUDGE GRAHAM: Yes. In order to preserve my record on appeal for the federal courts, all of the secrecy surrounding how this has been done has got to come out. I've got to know if they've looked at newspaper editorials. I know that they were sent to them, because Brad King testified he sent newspaper editorials to them. I need to know if they discussed them.

I need to know -- I've got -- if you'll let me put Judge Swigert on the stand, I'll have him testifying that he went to a Florida Supreme Court -- a U.S. -- excuse me. Strike

- PAGE 96 -

that -- A Florida Supreme Court justice and had a Bar complaint filed against an attorney. And I'm wondering if Judge Swigert -- that's correct.

THE CHAIRMAN: I lost -- start again. Say that again.

JUDGE GRAHAM: Judge Swigert -- if you'll let me put Judge Swigert on the stand, he will testify that he wrote a letter to Justice Erlich, when he was on the Florida Supreme Court, saying, "An attorney has misbehaved in Citrus County, and I believe he's violated the Code of Professional Conduct." Charles Horn. Okay?

Then Justice Erlich, who is the final arbiter -- one of the final arbiters -- on Bar grievances, filed a complaint against Mr. Horn. This has been established through the testimony of both Erlich and Swigert.

Now, that raises a reasonable question in my mind if the same thing has not been done with respect to me. This isn't just something I'm pulling out of the air.

THE CHAIRMAN: Do you mean that Judge Erlich, as then a Supreme Court justice,

filed a complaint against a lawyer? Is that what you're saying?

JUDGE GRAHAM: No. Follow me closely on this.

THE CHAIRMAN: Okay. Maybe -- I'm listening.

JUDGE GRAHAM: Justice Erlich, at the time when he was the final -- one of the final arbiters on grievance problems --

THE CHAIRMAN: He is -- or was.

JUDGE GRAHAM: Right. -- is approached by Judge Swigert --

THE CHAIRMAN: Right.

JUDGE GRAHAM: -- by letter --

THE CHAIRMAN: Right.

JUDGE GRAHAM: -- "There's an attorney misbehaving in Citrus County." Erlich writes a complaint to the Florida Bar.

THE CHAIRMAN: All right.

JUDGE GRAHAM: Okay?

THE CHAIRMAN: Presuming that's true, what has that got to do with what you're --

JUDGE GRAHAM: I believe it's been done to me.

THE CHAIRMAN: That someone went to the

Supreme Court?

JUDGE GRAHAM: I believe -- I don't believe -- I don't know it as a certainty, because I can't take the depositions. See, you've put me in the position of making a statement that I can't prove, but the reason I can't prove it is because you quashed the depositions of these Commissioners.

I wanted to put them under deposition and ask the question, "Has a Florida Supreme Court justice contacted any member of this Commission?" It's not an unreasonable question based on the sworn testimony that Erlich did it under the equivalent process used to sanction attorneys. I mean, I know this has happened with respect to Bar grievances. Has it happened with respect to JQC grievances? It's reasonable to ask the question and try to find out.

I would like to know: Has any Florida Supreme Court justice gotten in contact with any of these Commissioners and said, "There's something going on down there. You need to take care of it"? If it has happened, it would be, obviously, a denial of my due process

rights. That's one of the things I want to ask them.

I want to ask them what part did they play in the substitution of the individual members of the Commission who have recused themselves for being biased against me.

If you will remember, one of my first objections at the hearing was this: I object to this Commissioner and that Commissioner and that Commissioner, because they were replaced with the participation of the Commissioner who recused himself. Do you remember that objection -- strike that. I hope you remember that objection.

Now, guess what? The Bench and Bar Commission has just released a report to the Florida Supreme Court recommending something. One of the things they have recommended -- and I didn't know this at the time that I made the objection. One of the things they have recommended is a change in that rule. They have recognized how fundamentally unfair it is for a biased or prejudiced member of the Commission to participate in the selection of his replacement. I need to ask that question.

- PAGE 100 -

I want to know how these motions are heard. I want to take the testimony of these individuals on the Motion Commission --

excuse me, Committee. Does just one member decide what's going on? Do they do it by telephone? Have they ever noticed a judge of the hearing? Have they ever heard argument? I would like to also ask, "Have you ever granted one?"

I had one attorney who was -- participated in the Bench and Bar Commission tell me that he used to be a special prosecutor for the Commission. And I asked him -- I said, "How does the Motion Committee work?"

Do you know what he said? He said, "It's simple. You make your motion, they deny it. That's the procedure."

I want to ask them if that's true. "Have you ever granted one? How often do you grant one as opposed to denying it? What process is used?"

I want to establish that contrary to the rules, which make public all the meetings, all the proceedings after formal charges -- I want to establish that the full Commission approves or disapproves the Motion Committee's decisions

in private; that the judge is not allowed to go and argue to the full Commission and say, "The committee is wrong." No opportunity

to be heard, no opportunity to argue, in contravention of Chalk v. State -- the decision in Chalk v State.

I want to ask Mr. Bostic questions. I've got a lot of questions I want to ask Mr. Bostic, because I do not believe -- and I don't want to hurt his feelings -- I do not believe he has proceeded with due caution in this case. I don't believe -- I've got two of the most critical witnesses of the cases that were dropped against me. During depositions, it was learned that Mr. Bostic or Ms. Schumacher or Mr. Stan --

MR. BOSTIC: Jacobson.

JUDGE GRAHAM: -- Jacobson never talked to them. Never talked to them. They filed complaints that rise to the level of constitutional proportions to remove an elected public official and never talked to the people who were supposedly aggrieved.

And he said he was dropping these to streamline the case. He's dropping them

because when I took their depositions, their testimony was contrary to what he thought it was going to be.

MR. BOSTIC: That's inaccurate.

THE CHAIRMAN: Well, let's not argue the point. Let's move on.

JUDGE GRAHAM: The point is this: In Egan v. DiMonio, Florida 294 So.2d 639, the Supreme Court of the State of Florida said that where attorneys get deeply involved in the investigative portion of the case -- such as Mr. Bostic and Ms. Schumacher -- that they then become subject to deposition and testimony.

See, Mr. Bostic and Ms. Schumacher have not sat in a law office and then just reviewed notes from investigators and put together their legal theories and their case. They've gone out there and they actually participated deeply in the investigation of this case. And the Florida Supreme Court says, "Attorneys, if you want to do that, fine; but then you can become witnesses." I want to take their testimony. I want to show the Commission how poorly this case -- and how rushed it was done and how poorly it was prepared for them.

I want to go through and ask him questions about these cases that were dismissed, because I think you will find that when -- I'm going to go through and i'm going to put evidence in with respect

to some of these cases that were dismissed. I've got the case files and the transcripts. Because when the Commission sees what actually happened, the real words out of my mouth with respect to those cases, they're going to realize that this fellow has not done his job and that he has dragged you into -- one of the reporters said -- "the trial of the century" that didn't need to happen.

Mr. Bostic keeps saying over and over again, "Well, why doesn't the judge just take the witness stand and tell his side of the story?" You don't know how much I'd like to do that. I would love to do that. But it's not my burden, first of all, and it's improper for him to say that it's my burden to disprove the charges.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: It's his burden --

THE CHAIRMAN: Judge, excuse me. That's

not an argument. Whether or not you take the --

JUDGE GRAHAM: But he's making it an argument.

THE CHAIRMAN: But, I mean, I'm not paying any attention to that. You have the right to go on the stand or not. I mean --

and if you don't go on it, it is not going to make one little difference to us, so let's move on.

Where I'm at now is -- you've given grounds why you want to put on -- well, the evidence of the Commissioners' testimony, and I understand what you're saying. What I'd like to go through -- is there anything that we talked about that we've missed? In other words, in his summary about all the witnesses, is there anything --

JUDGE GRAHAM: I'm proceeding.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: I'm proceeding. And I would very respectfully ask permission just to finish that thought for the federal courts, because they're going to be reading this record and --

THE CHAIRMAN: I'm not going to allow you

- PAGE 105 -

to do any more argument on that, Judge. I think you've made your point clear, and we understand it. I would like to move along with the reasons we're here today.

- PAGE 119 -

* * *

JUDGE GRAHAM: I wanted to clarify something I said earlier about preserving a record on appeal for the federal courts. Among those is the United States Supreme Court, wherein I intend to file a petition for a writ of certiorari if the Commission ultimately finds me guilty of any misconduct and the Florida Supreme Court agrees with them.

And I'm at a loss to understand how the Florida Supreme Court -- excuse me, the United States Supreme Court -- is going to have a record on appeal of my affirmative defenses if my affirmative defenses are being tried in some collateral circuit court. I just don't -- it seems fundamental to me that -- if the State of Florida has created a procedure where a person can be charged with misconduct and is not allowed affirmative defenses within the

framework of that procedure, then there is no way to preserve that record on appeal.

I can't go to circuit court and allege affirmative defenses, because there will be no one in circuit court charging me with anything.

Now, if Mr. -- I might be willing to acquiesce to that proposition of law if Mr. Bostic is willing to stipulate to a stay of these proceedings while I develop my affirmative defenses in some other collateral forum.

Mr. Bostic, are you willing to do that?

MR. BOSTIC: No.

- PAGE 140 -

* * *

I want the Florida Supreme Court, the U.S. Supreme Court to know how far a Commission that's constitutionally empowered like this one can go to basically deny public officials their right to free speech by selectively prosecuting them.

- PAGE 160 -

* * *

And I'm further charged with saying, "You cannot separate morality from the law," which astounds me. And I want the United States Supreme Court to know that in the State of Florida, a judge -- under this vague of code and this type of unconstitutional Commission -- will actually go to the point of saying that a judge

should be impeached from office for stating, "You cannot separate morality from the law." I want that in the record.

* * *

- PAGE 323 -

* * *

And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the denial of my due process rights to make a defense against these false and trivial charges. End of objection.

* * *

Excerpts

from

Petitioner's Show Cause Response

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,

CASE NO. 80,273

NO. 91-415

_____/

SHOW CAUSE RESPONSE

CONSTITUTIONAL CHALLENGES

The Respondent renews all previous objections made to the Commission based upon the deprivation of his constitutional rights as guaranteed by both the State and Federal Constitutions. In addition to all constitutional objections previously made the Respondent assigns as constitutional error the denial of his Motion to Dismiss, his Amended Motion to Dismiss, and his Second Amended Motion to Dismiss. He incorporates herein by reference the following Third Amended Motion to Dismiss and requests that the Court grant it or in the alternative reject the Findings of the Commission based on the constitutional infirmities set forth therein.

From the protection of the United States Constitution the Commission can not escape.

The Respondents Third Amended Motion to Dismiss and Memorandum of Law in Support thereof proceeds as follows:

Excerpts

from

Petitioner's Second Amended Motion to Dismiss

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A

JUDGE, NO. 91-415

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

SECOND AMENDED MOTION TO DISMISS

Comes now Gary G. Graham, County Court Judge, and moves the Florida Judicial Qualifications Commission (hereinafter the "Commission" or the "JQC") to dismiss the Notice Of Formal Charges filed against him and served by mail on the 7th day of August, 1992, and the Amendment thereto filed October 26, 1992.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z.

* * *

- PAGE 6B -

* * *

GROUNDS

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State

and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and

prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 1B, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to charges 4A, 4B, and 4E, the JQC lacks jurisdiction for the reason that these widely publicized incidents occurred more than three years ago during the Respondent's first term of office (hereinafter referred to as "Ground Six").

7. As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges (hereinafter referred to as "Ground Eight").

A 334

Excerpts

from

Petitioner's Reply to Commission's Reply

EXCERPT FROM PETITIONER'S REPLY TO COMMISSION'S REPLY

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A

JUDGE NO. 91-415

CASE NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

/

REPLY TO COMMISSION'S REPLY

CORRECTIONS

Due to the short time allowed the Respondent to research, draft and file his Show Cause Response his Third Amended Motion to Dismiss and supporting memorandum contained certain errors and deleted pages. Accordingly the Respondent incorporates by reference and attaches hereto his Fourth Amendment Motion to Dismiss and Memorandum of Law in Support of Fourth Amended Motion to Dismiss. The Findings of the Florida Judicial Qualifications Commission should be rejected based on the Constitutional infirmities set forth herein.

- Note: Excerpts from the Petitioner's Fourth Amended Motion Dismiss Immediately Follow -

Excerpts from Petitioner's Fourth Amended Motion Dismiss

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A
JUDGE NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

CASE NO. 80,273

FOURTH AMENDED

MOTION TO DISMISS

Comes now Gary G. Graham, County Court Judge, and moves the Florida Supreme Court (hereinafter the "Court") to dismiss the Formal Charges and all subsequent amendments there to filed against him by the Florida Judicial Qualifications Commission (hereinafter the "Commission" or "JQC") in the above styled cause.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z. The Exhibits are contained in 7 volumes labelled "Exhibits to Show Cause Response and Third Amended Motion to Dismiss" on File with the Florida Supreme Court, Case NO. 80,273.

GROUNDS

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process.

Rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and

prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 4J, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by not only refusing to allow him to present evidence or argument on his Eleven Affirmative Defenses (which include among other things the above stated constitutional challenges) but also refused to allow discovery of the facts which would be necessary to support the Respondent's affirmative defenses or the above stated constitutional challenges. It did so by quashing the deposition and trial

subpoenas of past and current members of the commission, its office staff, its special and general counsels, its investigator, and numerous other witnesses having information related to these constitutional challenges.

7. As to all charges the JQC is an unconstitutional body and its rules are an unconstitutional violation of the Respondent's Federal and State due process and free speech rights for the reasons stated in the Respondent's Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B and attached hereto as Exhibit 172.

- PAGE 39 -

AS TO GROUND ONE

of speech.

During the hearings held in Inverness, Florida between January 29, 1993 and February 26, 1993 to consider various untrue allegations of unethical conduct filed by the JQC the JQC would not allow evidence or testimony related to the Plaintiff's affirmative defenses.

The affirmative defenses were as follows:

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal

Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judicial Conduct is so vague that a

reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

THIRD AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida JQC Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

FOURTH AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal Procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two

members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

FIFTH AFFIRMATIVE DEFENSE

As to Charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

SIXTH AFFIRMATIVE DEFENSE

As to all charges occurring before the Respondent Judge's current term of office, the JQC lacks jurisdiction for the reason that these widely publicized incidents

occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

SEVENTH AFFIRMATIVE DEFENSE

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited by ex parte communications.

EIGHTH AFFIRMATIVE DEFENSE

The charges against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct

* * *

Further excerpts from Petitioners Reply to Reply

- PAGE 51 -

* * *

Respondent advised the Florida JQC that the hearing of

- PAGE 52 -

his defense would require approximately six months. The Florida JQC issued an order stating that "Four days have been requested for the conclusion of the hearing." At the beginning of the Respondent's case the Commission gave the direct order that "We are starting today and we are going to complete this hearing by Friday" (T, P1473, L 6). Respondent attempted to proffer an objection based on the Decisional Authority of U.S. vs. MacLain 701 F. Supp 1544 but the JQC would not allow his proffer. (T, P 1476, L 25).

* * *

NOTE: The following is the excerpt from the proceedings referenced above where Petitioner attempted to make his *MacLain* objection but was cut short. Page 1473 is the beginning of the second four day trial session which began on Tuesday, February 23, 1993. The previous session had lasted from January 26, 1993 to January 29, 1993.

- PAGE 1473 -

PROCEEDINGS

THE CHAIRMAN: Good morning, everyone. The Florida Judicial Qualifications Commission is back in session on this matter in reference to Judge Graham's Supreme Court case, No. 80,273. We are starting today, and we are going to complete this hearing by Friday.

The Commission is here as they were before, but we have a different seating arrangement, and I would like to once again introduce the Commission members so we know who is who and where they're sitting.

And I'm going to start at the front row on the left, and there sitting is Mr. Rut Liles, who is an attorney from Jacksonville,

appointed by the Board of Governors of the Florida Bar, past president of the Florida Bar.

Next to him is Judge Kaney, who is from Orange County, a circuit court judge. He is in charge of the judges up there in Tallahassee, and he is the Vice Chair of the Florida Judicial Qualifications Commission.

Sitting next to him is Judge Baskin, from Dade County, the Third District Court of Appeal. She is chairperson of the District

Court Conference.

Sitting next to her is Mr. Griner, who is from the Jacksonville area. He was a former gubernatorial appointee and is an ad hoc member sitting here.

Next to him is the immediate past chairperson of the Florida Judicial Qualifications, from the First District Court of Appeals out of Tallahassee, Judge Klein Wigginton.

Sitting next to him is Ms. Sybil Barnes, who is a former gubernatorial appointee to this Commission, an ad hoc member, who is from the Tampa Bay area and a former educator here in the State of Florida.

Sitting in the back row, starting on the left, is Judge Demers, from the County Court in Pinellas County, who is chairperson of County Court Judges.

Sitting next to him is Mr. Stanley Tate, from Dade County, a businessman in the state, and he is a gubernatorial appointee.

Next to him is Judge Marvin Gillman, a County Court judge from Dade County. I think he has been sitting on the Commission the

longest here.

And next to him is Nancy Mahon, who is from the Jacksonville area. She is a gubernatorial appointee, and she is involved in civic activities in the Jacksonville area.

Next to Nancy is Judge Miette Burnstein, who is from the Circuit Court Conference, past president of that conference. She is a judge in the Broward County area.

Last but not least, former chairman of this Commission, a businessman from the Palm Beaches who is involved in statewide activities, Mr. William Clark.

That is the Commission members there. And my name is Joseph Reiter. I am an appointee from the Board of Governors of the Florida Bar, and I will continue presiding as Chair.

Sitting in front of me is Ms. Maciel, our court reporter. Next to her, on my right -- I think I see her -- is our clerk, Marcia Michel. Sitting to my left is the Executive Director of the Florida Judicial Qualifications Commission, Brooke Kennerly, and our Special General Counsel, Mr. Roy Rhodes, who will be assisting

the Chair and the Commission as we proceed further in this matter.

Let's see --

JUDGE GRAHAM: My name is Gary G. Graham, County Court Judge --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- for Citrus County.

THE CHAIRMAN: -- one second, please.

And I wanted to introduce Rollie Budd, our bailiff, who is going to be helping us. And the two other gentlemen -- I forgot their names, and I apologize.

THE BAILIFF: John Barry and Doug Alexander.

THE CHAIRMAN: We thank you very much for assisting the Commission.

Now, I recognize that Judge Graham is here representing himself, and Mr. Bostic is representing -- as Special Counsel here.

Now, before we begin proceedings, I have been requested to resolve an issue involving the State's Attorney's Office, and Mr. Dean is here to make a presentation about witnesses. And I want to take care of that matter now.

JUDGE GRAHAM: Excuse me. I would like

to voice -- I would like to voice --

THE CHAIRMAN: Judge, I am not going to take any argument from you. I am going to take care of this now.

* * *

Excerpts

from

The Transcription of the Petitioner's

Rule 6(b) Hearing Before the JQC

PUBLISHER'S NOTE:

The following page is unavailable for filming:

50p.

Let me say this just in further explanation of that objection. Folks, you are the investigators of my case. You have been meeting -- I don;'t know how many times you have met with Mr. Rhodes, maybe Mr. Bostic, other individuals and discussed complaints made about me. I have no idea what was said to you. I don't know what kind of newspaper editorials have been sent to you.

I have a particularly bad -- let's say the newspapers in my area have a particularly bad opinion about me -- an unfair opinion about me. They are constantly writing extremely hateful, distorted and untrue editorials about me. I have gleaned from certain newspaper reports a well-founded suspension -- suspicion that some of these newspaper editorials have been sent to you.

Do I know that for a fact? No, I don't. That's the reason I wanted to ask you. Why do I want to know if those newspaper editorials

have been sent to you? Because they poison you mind. You are going to be the trier of fact and the judge of the issues of law in

my case. You will be ruling on close questions of relevancy and other matters of evidence and procedure in this case.

What thoughts about me have been put in your mind that might prejudice and against me? I don't know. What people have talked to you? Who has called you on the telephone? Mr. Reiter, it's my understanding that an -- that anybody can call any member of this panel and talk to them about a judge. Is that correct?

VICE CHAIRMAN REITER: Judge, let me explain to you that you are here on allegations that have been published to you only, number one. Number two, this Commission will consider those allegations and any information that deals with those facts that are alleged as presented here today, and we will make our rulings accordingly. This is not a trial today. Do you understand that?

JUDGE GRAHAM: I understand.

VICE CHAIRMAN REITER: It's not presentation of evidence. And it's at such

time as and if, and only if, there is a trial that you may make whatever procedure objections you want. What we are here for

you to do today, if you are so willing to do so, is to respond to those allegations in there.

JUDGE GRAHAM: Right.

VICE CHAIRMAN REITER: And I can you assure you, if any member of this Commission felt they should recuse themselves, they would have done so. So you may proceed sir.

JUDGE GRAHAM: Well, I think my objection -- the point of my objection has been missed. This is an official proceeding before the Commission. At this time, I would like to know what matters have been brought to your attention ex parte; what matters have been discussed with you; what editorials have been shown to you. At this time, I would like to know what sheriffs, State Attorneys or judges may have discussed something with you.

And, again, I don't know for sure they have. But I should have a right to know what type of communications have been made to you so that I can fully explain and resolve any questions in your mind about the propriety of

my conduct as a public official. And it is fundamentally unfair that this Commission operates in secrecy, is able to engage in ex parte

communications about the judge, about his reputation and have possible relationships to the individuals who are complaining.

I am very interested in knowing if any members of this Board are in the newspaper business. I am very interested to know if they have been contacted by other people in the newspaper business and that my reputation in the press has been discussed at your meetings. If it has, I want to know that for two reasons.

One is to allow me to answer them, to remove that poison from your mind, to remove that prejudice. The other reason is to disqualify you if it rises to the level of a disqualification. And Judge -- it is Judge Reiter? Is that correct?

VICE CHAIRMAN REITER: No, Joe Reiter.

JUDGE GRAHAM: Mr. Reiter, I respect your opinion if you think that anybody thought they should be off this Board,that they would do it voluntarily. I respect that

opinion. But I believe that it is probably more appropriate for me to be able to know what type of relationships and communications have been made to you and to allow me to make those motions if I think they are appropriate.

Just as support for my objection, I would like to point out to you the fundamental unfairness that has already been demonstrated to be by this Commission. First of all, I was sent a Notice of Investigation and given 14 days to prepare for eight charges, some of which went back almost four years, many of which did not have transcripts available, and was set for a hearing in Fort Lauderdale with approximately 14 days notice.

I had an attorney who was very familiar with the Commission, who once was a member of the Commission, call the counsel for the Commission and ask for a continuance. He assured me that that type of continuance is routinely granted when cases are set on such short notice. That request was denied.

That motion for a continuance was well founded. The proof that it was well founded is that ultimately it was granted. But the

Commission required me to travel all the way down to -- where was it? Fort Lauderdale?

MR. TATE: West Palm.

JUDGE GRAHAM: West Palm Beach and spend almost $600 is expenses to go down and simply ask you for the time to

prepare the information that would be necessary for you to make a correct decision.

When I did that, the Commission sent me out in the hallway for 45 minutes and discussed my case. And when I cam back this Commission didn't say, "Judge, we appreciate your arguments of how important our business is; we appreciate how important this decision is to the people of Citrus County, to you personally and to the justice system of Citrus County; and because we want you to have enough time to prepare, we're going to grant you this continuance."

You didn't say that. You said, "Judge, we're going to grant this continuance but only because we want to pile it on you higher and deeper." And you did it through some euphemism about second base. Then I go back to Citrus County. I continue to work hard to

gather this information.

And I write a letter to Mr. Rhodes, and I say, "Please advise the Commission and ask them if I can have six hours to explain all of these charges. That's how long it will take them -- take me to

explain to them not only the particulars about the cases, but the politics involved in Citrus County -0- Citrus County judicial system."

He sent me back a letter saying, "No, you can only have three hours. And by the way, second base is 24 additional charges." This Commission granted me after -- this Commission -- this Commission must have spent hundreds of hours on this complaint. Sheriff Dean reported in the newspapers that Mr. Bostic has been down there for weeks investigating this. Now, I don't know whether that's true or not; he reported it.

Considering the number of cases, you folks must have spent hours talking me. Some of these must have been filed four years ago. You spent 45 minutes alone just discussing my continuance. And after all the time that you have spent hearing the other

side of the story, not knowing a thing about me, not knowing my side of the story at all, you give me three hours to explain 32 complicated offenses; 5.6 minutes per charge.

Now that's fundamentally unfair. You're not going to hear my side of the story in 5.6 minutes. And then I come to the

commission. I ask to have an assistant, and I'm denied an assistant. I will grant you that you have remedied that fundamental unfairness by providing me a no-expense transcript, and I do appreciate that and thank you for it.

At this time, I 'm going to make both -- I'm going to proffer to you both a written and verbal statement. My written statement I'm going to read to you.

VICE CHAIRMAN REITER: You could have passed that up to us. That's fine.

JUDGE GRAHAM: That's all right. I need the exercise.

VICE CHAIRMAN REITER: We're going to have -- this is a statement that you're offering that you're going to be presenting?

JUDGE GRAHAM: This is my 6(b) written

* * *

DOCUMENT 11

Excerpts from the Deposition

of

Hon. Woodrow Beauchamp

A 360

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

No. 91-415

Honorable Gary G. Graham

Citrus County Court Judge

DEPOSITION

of

THE HONORABLE WOODROW O. BEAUCHAMP, JR.

ADVANTAGE COURT REPORTING SERVICES
605 Northeast First Street, Suite E
Gainesville, Florida 32601
(904) 371-7209

Q. Okay. Well let's just -- We would have to include in our hypothetical that you have a large law firm. Okay? Now, your wife is a junior member on the law firm. She's a junior member, just hired. A case comes before you. The law firm represents one of the litigants, not your wife, the law firm. Does the ethical code in the state of Florida require you to recuse yourself?

A. Well, I think that's asking me, again, to determine the ultimate conclusion in the case and that would not be appropriate for me to do at this time based on the limited information I have. I do understand that under the current canons there is a question that would be a question in my mind about the propriety of handling a case if my wife were in the law firm, and I believe -- I'm just going from memory -- I believe there may be a case that specifically says you cannot do that. I would certainly research it carefully before I got involved in that.

Q. Okay. What if I were to tell you that the Committee on Standards of Conduct Governing Judges said that you did not need to recuse yourself?

A. You would probably right, because you've researched it and I haven't.

- PAGE 20 -

* * *

Q. Okay. Now, a second question that's a little more difficult. Okay?

Let's say the other members of the historical society want to solicit funds with a letter, and it was the historical society letterhead with all its members listed, and your name was on the letterhead. Would that be unethical for those members to use that letterhead with your name on it, to solicit funds for he society?

A. I hate to sound like a broken record, but I would certainly want to research that or contact someone in authority about the canons before I made that decision to allow my name to be used on the letterhead.

Q. So the answer is you would not know whether it's ethical or not without researching?

A. There would be a serious question in my mind without researching it. I suspect that I probably would not be permitted to

do that, but that would be a guesstimate at this time without researching it.

Q. Okay. Would it surprise you if I told you that the committee said, yes, that's perfectly okay?

A. I think I'd be a little surprised.

- PAGE 22 -

* * *

Q. Hypothetical 981. Would it be unethical for your wife, in her part time to type transcripts of testimony taken at trials over which you preside?

A. I honestly don't know without researching it.

Q. Okay. Well, even after your researched it, Judge, would it surprise you to find out you probably couldn't find your answer?

A. That's possible.

Q. Would it surprise you that four members of the commission said it's okay -- I mean Committee on Standards of Conduct Governing Judges said it was okay, but four said it wasn't?

A. That wouldn't surprise me, no.

Q. Okay. So now, you're faced with a question. Your wife wants, in her part time, to type some transcripts. Okay? You

write a letter to the committee. They write back and say four members said, "nothing wrong with it; all she's doing is doing her job." Four other members say, "Oh, we have strong reservations. This may be unethical." Now what are you going to do, Judge, as a judge?

A. Well, you know, I really don't know what you want here because I, you know, I don't know what's to be expected

of me here. If you're asking me what would I do in that case, I might could speak to that. If you're asking me to substitute my judgement for hat of the committee, then that would not appropriate.

Q. They don't have an opinion.

A. If you're asking me what I would do --

Q. What would you do? After worrying about it and researching and finding out that answer, what would you do?

A. I think that I would probably err on the side of caution and not do it.

Q. Even though there might not be anything wrong with it, whatsoever?

A. Right. Exactly. I might preface that -- I mean I might qualify that by saying that if, you know, if the committee was uncertain in their ruling, then the matter of the subject to review somewhere down the road by the Supreme Court or other appropriate reviewing agencies. And there is a serious question there, when you've got a split committee decision. And I suppose that one could interpret that either way they wanted to, but realizing that their decision might not be upheld if it were reviewed later. So I -- say, I would probably err on the side of caution and not do that conduct which is questioned, because, as you mentioned earlier, I'm elected to this office. It means a great deal to me. And I value that office and I don't want

to put myself in a posture of being questioned about any of my conduct from an ethical standpoint.

Q. Don't you think it's kind of scary that four members of these experts will say it's good and four members will say it's bad. Doesn't that frighten you a little bit?

A. Well, it concerns me that, you know, that you don't have a definitive answer in those kind of cases. But if they

disagree, they disagree. It's like an appellate court decision, up there. You may have a four-three decision on the Supreme Court. If that happens, it happens, you know. That's their job to make that decision and apparently, that's the way they wound up, four and four from what you tell me.

Q. Does it concern you that the JQC, at any given time, might have thirteen that agreed with the four that were against it, but, at any other time, they might have thirteen members that agreed with the four members that were for it? Does that concern you?

A. A lot of things concern me. Yes sir.

Q. Does that concern you?

A. You mean in a positive sense or a negative sense?

Q. Well, I mean does it bother you that you don't know how the JQC was going to rule from one year or one decade to another?

A. Well, I could say it probably concerns me, as a

lot of other things concern me. Yes, sir.

* * *

* * *

Q. I see. How about this hypothetical, 828. This is an interesting one. Suppose you don't like the circuit judge that sits in Levy County. Now, that's total hypothetical. Okay? And you really think it would be to the benefit of the community, the bar, and the judiciary if someone would run against him. And you know an attorney that you think would make a good judge. Would it be unethical, in a private conversation, for you to suggest to him and encourage him to run against the incumbent judge?

A. Are you talking about just talking to another attorney who is a friend of yours?

Q. Right. In a coffee shop.

A. Just you and him.

Q. You and him. You say something to the effect of "I think you should run against him. I think it'd improve the bar. I think it'd improve the bench and that the community would be better served.

A. I believe it was recently that the Federal District Court ruling not too long ago which did not deal with this particular issue

but it dealt in general with the rights of free speech of the attorney -- not of the attorney but that of the judges when they were candidates. And I believe that the concern for the right of free speech would protect the judge's right to discuss privately with friends of his -- his views on a lot of issues, not just court

issues, but all kinds of domestic issues and maybe, you know, just a multitude of issues because I think the right of free speech would protect that.

Q. So you believe that it would be ethical and protected by free speech to solicit this attorney to run against the judge?

A. Well, you know, we're talking about a discussion, and you're talking to him one on one about it, and you're expressing your views and he's expressing his views, and I realize that the rights of judges have been severely -- or not severely but rather amply limited because they sit on the bench and we're suppose to retain impartiality. But I do not believe the limitations on judges have gone so far as to limit their right to private conversation with their friends or family members.

Q. Including soliciting an attorney friend to run against the judge?

A. You know, you may be talking about some rule that says they can't do that, but I'm not aware of one.

Q. Okay.

* * *

JUDGE GRAHAM: I have one last question.

BY JUDGE GRAHAM:

Q. Does it concern you that eight of the ten members

of the Committee on Standards of Conduct Governing Judges, under that exact hypothetical, consider that to be unethical? Would that concern you?

A. Well, there again, you know, if I were sitting where they were, and had all the facts before me and they were different as I have heard them now today, as you've stated hypothetically, I might have been in their number. But just from the limited information I have, I told you how I felt and that means under these circumstances their opinion would differ with mine. And so, in that sense, I guess I would be disillusioned to think that folks

disagreed with me, but I've found that to be true over the years. So it concerns me when folks disagree with me but I'm not taken aback by that. I've been overruled a time or two by the appellate courts.

Q. Now, we're not talking about overruled. These people wanted to take away your job.

A. Well these people here, you said it said that there was certain comment that couldn't be. I didn't know anything about them saying taking away a job but you know that --

Q. It's unethical. You understand that if you violate the code of ethics, you can be -- your job can be taken away from you?

A. If that's their ruling and I'm not familiar with

it, so that, you know, if that's their ruling as you say it is --

Q. Okay. It's 828. Opinion number 828, cited May 13th of '82. I want to ask you something. Knowing their opinion now -- Okay? Would you now be afraid to solicit an attorney to run against another judge?

A. Yes, sir. I'd be concerned about it. I would. I don't -- You know, I don't mean to be meek about it or weak backboned or anything like that, but I do try to adhere to the law and I try to adhere to the principals of the law and the canons that are applied to me and my office. I try to abide by the law. So if that's the law, then I would probably be reluctant to do those things that might jeopardize --

Q. So even though you think it's a matter of free speech, you would -- might be reluctant to solicit an attorney friend to run against a judge because you now know about opinion number 828. Is that correct?

A. What am I supposed to do, go out and violate the law? Is that, you know --

Q. I understand.

A. You asked me do I have a concern about it. Yes. I have a concern.

Q. I sympathize with your concern. I have the same concern. . . .

* * *

Q. That's 8215. Could you, as Levy County judge, properly serve on the board of directors of the Mothers Against Drunk Drivers? Would that be ethical?

A. Well, whether I think it's ethical or not, personally, I believe that the current canon is against that as I understand it. I would say, no, I cannot serve on that board under the current state of the law as I understand it.

Q. If you were elected to circuit court judge next year, could you serve on the board of directors of the Mothers Against Drunk Drivers?

A. My answer would be the same. I don't think that would change the circumstances. How else is there to say that? I don't think that would change my answer.

Q. Well, the commission split all over the place including some of them said that it depended on whether or not you were county judge or circuit judge. Does that surprise you?

A. Does it surprise me? I think it surprised me a little bit, yes.

Q. Yeah? Four were of the opinion a member of the judiciary might serve as a board member of MADD. The majority said there might be problems with a county judge assigned to a criminal division. Okay? It goes too far to say that no judge can serve. As to whether a judge not likely to try a DUI cases could serve, a majority found no impropriety. So they really don't know.

A. I really don't want to comment on the competence of their decision. They are the right and the wrong on the subject. I think that speaks for itself.

Q. That was 8218. . . .

* * *

- PAGE 86 -

* * *

Q. Let's say an attorney files a motion and gets a case dismissed in front of you in trial court, and then when the case goes up on appeal, he tells his client, "No money. No appeal. Handle it yourself." And then it gets reversed and you wind up back in court with the trial attorney -- a new trial attorney and the defendant. And they're all saying well, we got it reversed on appeal, Judge. And you say, "Who represented you on appeal?"

And the defendant says, "Nobody." You think it would be unethical to remind the attorney of his duties to represent his client on appeal? Do you think it would be unethical to remind him of that?

A. Unethical? You mean do I think it's unethical or do I think --

Q. You said --

A. -- that the law says it's unethical?

Q. -- you believe that the current code of conduct for judges in Florida would make it unethical to say, "Mr. Attorney, you have a obligation not to abandon your client on appeal."

A. Well, if they've spoken to that, I would hope that I could research that and find the answer to that in their

rulings. It's a little bit like the story of the old Greeks that argued about how many teeth a horse has in his mouth. If they'd open his mouth and count them, they could find out. And so if the JQC has ruled, then I'd want to go to the books and see what their rule was, and I would try to be guided by that.

Q. I understand that, but based on your understanding of the code now, would it surprise you if that was unethical conduct?

A. Would it surprise me if the JQC had determined it to be unethical? Is that your question?

Q. Yes.

A. I think it would if it was in a vacuum, if that was the only -- if that was just a sterile environment that I was considering right there and there were no other extenuating circumstances.

Q. Okay. Now --

* * *

- PAGE 95 -

* * *

Q. Do you perform weddings?

A. I have. Yes, sir.

Q. And you've accepted pay for them?

A. I just answered that.

Q. I can't remember your answer.

A. I said I have in the past.

Q. Uh-huh. And when do you usually perform your weddings?

A. And generally, let me qualify that. I think when I did ask, that was more like -- it was like a gratuity. It wasn't a charge.

Q. I understand.

A. I do not charge for that.

Q. I understand.

A. And we had a rule, one time, that said the judge could receive gratuities.

Q. Right.

A. Now, I don't know if there's a limitation on that or not.

Q. But when do you normally do your weddings?

A. Well, over the years, I've done them in all --

- PAGE 96 -

lots of times and places. Certainly some in the office, you know.

Q. In your office?

A. Yes, sir. But I've been called out to do them, you know, at other places, too.

Q. And the ones at your --

A. Other gatherings --

Q. I understand. I do it also. And, at your office, have you accepted gratuities for ones that you performed in the office?

A. I have in the past, yes, sir.

Q. Okay. And was this during working hours of the day between eight and five?

A. Sometimes, yes, sir.

Q. Okay. Now, would it surprise you to learn that the committee of standard of conduct judging -- governing judges thinks that's unethical? Would that surprise you?

A. No. I think that's an arguable issue. I think that there's two points of view on that.

Q. Of the nine members of the Committee on Standards of Conduct, eight felt the opinion should broaden to add that, "the performance not detract from your judicial duties and that the judge not accept compensation for performing marriages during normal working hours at the courthouse.

See, they -- According to them -- Now, Judge, I'm not

faulting you. I think that's ridiculous. Okay? Because, you know, a judge doesn't work minute to minute, hour to hour. There's time when he, you know, he's taking a break. And to say that somebody can't walk in his office and perform a wedding and offer to

give him ten bucks and that that's unethical, I think that's entirely absurd. So I'm not criticizing you. But the point is that you have done something the Judicial Committee -- eight members consider unethical. Does that concern you?

A. Well, like I say, you know, some years back there was a ruling that said that you could. Now if they've changed that, you know, yeah, that, you know, that would concern me. But I can understand their point of view. There's two school of though on that. And I presume, from the tenor of your question, the JQC has not spoken on that yet.

Q. Well, this is the -- this is a committee of experts and this is eight out of nine. This is one that they are more certain of.

A. Well, you're looking at the committee decision and the JQC is not spoken on. But I'm not surprised that there would be that point of view because I believe on that particular issue there are two schools of thought.

Q. And you're not angry about that? That they would say something as innocuous as that -- that eight members of

this committee of experts say that you've done something that they consider unethical. You're not -- as innocuous as that, and you're not angry about it?

A. Judge, I don't, you know, want to be unduly vague. But I don't think it's a relative issue whether I'm angry or not, you know, at this point. I don't think that's appropriate.

Q. It probably is not, whatever your answer --

A. I would refrain from answering.

Q. I agree with you. But are you surprised? Or did I already ask you that?

A. I'm not surprised because there are two points of view on that. And certainly you've indicated that the committee had a conflicting point of view there but --

Q. Now, do you understand that if there was somebody in this county that had a grudge against you, maybe somebody that ran against you in the last election if you ever had an opponent, or wanted to run against you in the next one, do you understand that they could file -- fill out a JQC report based today on your deposition?

A. Perhaps. But then it's kind of like filing a complaint on a criminal charge with the state attorney. You can file a complaint

on virtually any and everything and the state attorney has to determine whether there's a basis for those.

- PAGE 99 -

Q. That's right. And Judge Graham might be charged where Judge Beauchamp might not.

A. Well, I think that's an over simplification. I think Judge Graham or Judge Beauchamp, either one, might be charged under some given circumstances.

Q. Judge, fortunately for me, I've never ever accepted a gratuity for a wedding. But I guarantee you something, if I had ever accepted a gratuity for a wedding, like at eleven o'clock down at my courthouse, and they filed a complaint against me, I can assure you it would be charge number forty-seven right there.

* * *

DOCUMENT 12

Excerpts from the Deposition

of

Harry Lee Coe, III
(former Circuit Court Judge)

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

NO. 91-415 SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

DEPOSITION OF:	HARRY LEE COE, III
TAKEN BY:	The Honorable Gary G. Graham
DATE:	January 21, 1993
PLACE:	Office of the State Attorney for Hillsborough County Hillsborough County Courthouse Annex, Fifth Floor Tampa, Florida
TIME:	4:30 p.m. - 6:20 p.m.
REPORTED BY:	Ekaterine L. Trofimov, RPR-CP Notary Public State of Florida at Large

* * *

Q Do you believe that if a judge would not allow a defendant to cohabitate with a girl friend who he had beaten up -- in other words, no contact with the victim -- do you believe that would be illegal or unethical under the code?

A No. There's no way under the code that's illegal. It might run afoul of the second district, but that's not your question. But I don't think that would run afoul with the second district.

Q Now, if during the proceedings, where a judge said you can't live with an unmarried -- a victim -- now, this is a battery case, and the unmarried female is the victim -- and a public defender were to say something like, "Judge, you're trying to impose your morality into the courtroom," do you believe that under the Code of Judicial Conduct it would be unethical for a judge to state, "You can't separate morality from the law"?

A No.

* * *

* * *

Q Now, you would also like to make some derogatory comments about one of your opponents with respect to his or her drinking problem, their prior criminal investigations and convictions. Would you be allowed to do that?

A I see nothing that prohibits that under Canon 7, and I don't -- there doesn't appear to be any other canon that would deal with it.

Q You would also like to make comments concerning your opponent's prior to employment as a public defender and the difference in your conservative philosophy as compared to his or her liberal philosophy. Would there be anything wrong with that?

A I don't see any prohibition in Canon 7.

Q Additionally, you would wish to comment on your ability to efficiently handle a heavy case

load as compared to the inability of one or more of your opponents to do this. Would there be anything wrong with that?

A I don't see anything wrong under Canon 7 as so stated.

Q Now, would it surprise you that under Opinion 90/18 that six committee members on the Committee on Standards of Conduct Governing Judges said that all -- excuse me -- that all of the things that I mentioned with respect -- starting at derogatory comments, they said that these were all contrary to the canons? Would that surprise you?

A What canon are they quoting? Do they say?

Q 7, B, the one you were reading.

A 7 what?

Q 7, B.

A B.

Q Uh-huh.

A I'd be amazed. I see nothing that would prohibit -- it's amazing to me that --

Q It's amazing to me, too, Judge.

A I mean, my goodness, are we supposed to stand silent if somebody is not doing what they ought to do? I don't see where Canon 7 says that at

all.

Q I agree with you. Your amazement is only surpassed by my own, not only at the code and these opinions but also the things I've been charged with.

A As I hear that opinion, it's saying that you cannot bring out the record of an opponent or an incumbent judge, and I don't see --

Q Alleged drinking problems, prior criminal investigation.

A I don't see where Canon 7 prohibits that. And it shouldn't prohibit it.

* * *

- PAGE 19 -

* * *

Q Now, during mediation conference, do you see any ethical problem in stating to the defendant, "Mr. Antinucci, you had better settle this case because there's lots of Antinuccis in the world but only one Ted Williams"? Do you see an ethical problem with that?

A Oh, I'd have a lot of problem with that.

Q Do you think it would probably be a violation of the code?

A Oh, I would hope so.

* * *

- PAGE 23 -

* * *

Q But his statement that there's one Ted Williams but lots of Antinuccis -- you would agree that that's a violation?

A Absolutely. I would hope so. . . .

* * *

- PAGE 24 -

* * *

Q A similar hypothetical: A judge is presiding over arraignments. He makes a -- there's a motion before the court in Case Number 1. The motion is denied.

A By the defendant or defense attorney or --

Q The defense attorney makes a motion. The state attorney is there. The motion is denied. There's only one state attorney in the courtroom. Case Number 2 is called to order. The defense attorney for Case Number 2 starts arguing his motion. The judge looks up, and the state attorney is busy arguing, out loud --

well, the defense attorney is busy arguing out loud with the state attorney.

A Number 2 defense attorney?

Q Number 1 defense attorney. In other words, the case is already over.

A We're in Case 2 now? Number 1 defense attorney is arguing with the state attorney?

Q Right. In other words --

A I'm with you.

- PAGE 24 -

Q -- the judge is trying to decide Case 2, and --

A Case Number 1 attorney is arguing with the state attorney.

Q Out loud. Before the judge can get their attention and call them to order, the defense attorney yells "bull" at the state attorney and starts to stomp out of the room. The judge holds the attorney that yelled "bull" in the crowded courtroom in contempt and sentenced him to probation. Do you think that would be a violation of the Code of Judicial Conduct?

A I would certainly hope not.

Q That's one of the things I've been charged with.

A No, we're in bad shape if defense attorneys can conduct themselves that way, or if anybody can conduct themselves in that way in the courtroom -- we're in bad shape as judges.

* * *

- PAGE 27 -

* * *

Q . . . book and I don't know the opinion number. You belong to an organization which is helping to restore historical buildings. You're an officer in the organization. The stationery has a -- the

- PAGE 28 -

organization has stationery identifying you as a judge and being an officer of the organization. Would it be permissible on that stationery to solicit funds for the organization?

A Absolutely not.

Q Now, the committee has said, on that one, it's absolutely okay.

A I would never do it, and I cannot conceive of how they could okay that. If they do one, they've got to be -- that's inconsistent.

* * *

- PAGE 30 -

* * *

Q What if the judge did this while consistently appearing in court in plaid shirts and no tie and no robe?

A The judge?

Q (Nods head affirmatively)

A That would be horrible. I would hope that would be a violation.

Q What if the same judge --

A Now, again do you want me to -- I would hope that would be a violation. I wouldn't do it, and I wouldn't agree with that. Do you want me to figure out if that's a violation?

Q I just want your best -- basically, what I want to know is -- is your understanding, without,

- PAGE 31 -

Judge Coe, really --

A That's not dignified, yes. That's a violation, clearly, of Canon 3.

Q What if the same judge in open court, during arraignments, dissatisfied with what the state is --

A Is satisfied or dissatisfied?

Q -- dissatisfied --

A Dissatisfied.

Q -- with the state attorney on a particular cocaine case, were to say, in open court, publicly, "This is a chicken s-h-i-t case"?

A That's horrible. If that isn't a violation, I would be appalled.

Q A judge in court is confronted with an attorney who comes in in slacks and a leather sports jacket. He informs him that the court requires suits and ties and offers to allow him to use the judge's suit jacket in order to continue with the proceeding. Do you think that would be a violation of the code of conduct?

A Absolutely not.

Q That's another thing I've been charged with.

A Well, that's -- we're in big trouble if

people can decide for themselves how they're going to dress.

Q Would it change your mind if the coat that I lent him was a little too short for him?

A No. Any judge that acted in that fashion would be acting properly and the only way to act. I've always said, carry that to a logical extreme. If people can determine for themselves what they're going to wear, what if they start coming in naked? Is that all right?

Q Well, I almost -- I got in a lot of trouble because I wouldn't let one guy come in with naked females on his shirt, saying (expression unclear). I got a lot of flak for that one, too.

A I think the conduct is disruptive. It isn't a question of personal taste of the judge one way or the other. It's a question of maintaining the order and dignity of the courtroom. And that is clearly disruptive. It's a discretionary call that the judge should be allowed to make as to what somebody wears as long as the judge is acting reasonably in exercising discretion. And certainly in the hypothetical or the fact situation you've given me, the judge was acting very reasonably.

* * *

- PAGE 35 -

* * *

Q Okay. This is a hypothetical, but I can't remember the number. It's out of the other book. You are a judge in a county. And you're unhappy with the performance of another judge. Can you have a nonpublic hearing, a private hearing, or a private discussion with another attorney, encouraging him to oppose the incumbent judge?

A Well, again I wouldn't do that, but that isn't the question. The question is whether or not that's a violation of the Code of Judicial Conduct. I think it's a violation of Canon 7. It's political activity inappropriate to a judicial office, I think clearly a violation.

Q Judge, I'm not certain, but I believe the committee went the other way on it. I think they said that because it was a private discussion, it

- PAGE 36 -

wasn't really political activity and that you had a right to encourage good candidates to run. I'm not certain of that, but I believe -- that's from my best recollection.

A Well, I vehemently disagree with that.

* * *

- PAGE 39 -

* * *

Q . . . The purpose of the Children's Service Council is to raise tax money to spend on children. Okay?

Now, you are a judge, and you wish to know if you can speak in behalf of the establishment of a children's service council in your county. Can you do that?

A That's an interesting question because it brings to bear the raising of money. But can you do it under the Code of Judicial Conduct?

- PAGE 40 -

* * *

A Here it is. Here it is. It is here. It's 4, C -- 4 being, "A judge may engage in activities to improve the law, the legal system, and the administration of justice." And C says, "He may

serve as a member, officer, or director . . . devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an

- PAGE 41 -

organization in raising funds," which is surprising to me. I did not think that was in there. "He may assist such an organization in raising funds and may participate in their management and investment, but [may] not personally participate in public fund arising activities."

Now, I wouldn't know how in the word you're supposed to interpret that. That sentence is contradictory to me, but that's neither here nor there. Under your hypothetical, you'd clearly be within the Code of Judicial Conduct to serve . . .

* * *

- PAGE 42 -

* * *

Q You write them a letter and say you want to do this.

A Right.

Q How would you feel if they wrote back and said that it is believed that you can perform a valuable service by doing this

and explaining the need for the program without emphasizing the tax consequences, you should avoid giving any appearance of personally pursuing the fund-raising aspect of the referendum?

A Well, I disagree with that. If this canon that I just read was in place at the time of that opinion, I totally disagree with that opinion because it says you may assist in raising funds, and you're not even doing that. You didn't even ask

that, apparently, or whoever asked for the opinion. You just said "Can I help them -- can I encourage the development of this council?" And they gratuitously threw in about money, but they're wrong, if this 4, C, was in place.

Q Do you see any way that an individual could publicly speak about a children's services council without talking about the tax aspects of it?

A Not honestly, no. When I say -- I'm talking about, you couldn't speak -- when you speak, you must speak honestly. And if you left out the tax aspects of it, I don't think you'd be speaking candidly and honestly. A lot of people would say, "Gee, that's a wonderful idea." And then the next day you read in the paper,

yeah, it's going to cost you a million dollars. And they say, "Gee, I didn't know that." You've misled and deceived, so you must talk about that, and it is, in my judgment, under 4, C, permissible.

Q So you would disagree with the ethics committee?

A Absolutely.

* * *

- PAGE 44 -

* * *

Q . . . Judge. A judge, in a small rural county, for several years drives a red pickup truck and parks it in the official parking space of the judge identifying it as the judge's parking space. He has displayed on this truck, for several years, a bumper -- a license plate. And the license plate says, "I am a coon a-s-s," and has a picture of a raccoon, with its tail raised --

A "I'm a coon ass"?

Q -- "I'm a coon ass" -- a picture of its tail raised, with a graphic depiction of a brown anus and a little black sphincter. Do you think that would be in violation of the Code of Judicial

- PAGE 45 -

Conduct?

A I would certainly hope so, and I think it would be.

Q A judge handles DUI cases. On may occasions during probation violations, he's told by the defendants that, "Judge, the reason I didn't pay my fines, do my community service, or go to DUI school is because I didn't have transportation. You took my car away from me" -- which is kind of an anomaly because you're required by law to take it away. As a part of a sentence, it becomes know to you that an individual does not have transportation, and you require him, as a condition of his probation, that he obtain a bicycle for transportation. Do you believe that to be a violation of the Code of Judicial Conduct?

A I don't see anything in the Code of Judicial Conduct, in reading the black-letter canons -- not the comments -- that would seem to prohibit that.

* * *

- PAGE 49 -

* * *

Q You're in court, and you are sentencing an 18-year-old individual. He has been -- he has pled guilty to drawing penises [sic] on the wall -- giant penises, with paint, on the walls of his

high school, with vulgarities. And you are also apprised that prior to his 18th birthday, during this event, he was on HRS probation as a juvenile delinquent for burglary.

A Had he been convicted of this drawing?

Q Yes. He pled guilty to it.

A And now he's before you for what purpose?

Q Sentencing.

A For the drawing?

Q Of the penises.

A Okay. Go ahead. I'm sorry. And before he had done what, now?

Q He did this while he was on probation for burglary.

A So he pled guilty to a violation of probation?

Q No. This is just the adult case.

A I got you. Just the -- defacing is a misdemeanor? Defacing is the charge, something like that?

Q It would be criminal mischief.

A All right. Go ahead.

Q Based on his record and his conduct, the judge sentences him to 60 days in jail. His mother approaches the court and says to the judge, "Every child does this. It's part of graduation," and "You're the problem."

And the judge responds, "Ma'am, I'm not the problem. You're the problem. I can tell by the way you're defending him."

Do you believe that that would be a violation of the Code of Judicial Conduct?

A No. I see no violation there.

Q Are you certain about that one?

A I see no problem with that.

Q That's another thing I've been charged with.

* * *

- PAGE 64 -

* * *

Q Okay. You want to write a book report --

A As a judge?

Q As a judge, you want to write a book report on another book, titled A Critical Analysis of the Warren Court. Would that be a violation of the Code of Conduct to do that?

A Do you want me to shoot from the hip, or do you want me to look through here? I would hope not. You know, it's improving the administration of justice, it sounds like to me. If the court -- and you're talking objective -- I mean, you're not zeroing in on any individual or any individual court -- well, I mean, or -- well, strike that. You really, the Warren Court, but you're not being -- I don't see any problem with that.

You know, I can't come up with what I want to say. I mean, if you start writing a book report critical of your fellow judges or Florida judges or judges you deal with, I can see problems. But when you get removed to the Warren court, I don't know if there's a distinction there or not.

- PAGE 65 -

It would seem to me that then you're trying to improve the administration of justice.

And, again, you may agree or disagree with them, but it seems to me that you're within the framework of the improvement of the administration of justice. And even though I might disagree with your opinion, that's again where discretion comes in.

A judge must be given broad discretion when interpreting the Code of Judicial Conduct. I'm trying to find that. "A judge may engage in activities to improve the law, the legal system, and the administration of justice." It even say you may write and lecture and teach, public hearings, raise funds.

No, in those terms, I think it's -- I guess what I'm saying is, it's a case-by-case analysis. And in this case, I would see nothing wrong with it.

Q Would it surprise you to know that the committee unanimously said that would be unethical?

A Unethical to write about the Warren Commission?

Q To write a book report about a book called A Critical Analysis of the Warren Court.

- PAGE 66 -

A Now, that is unduly restrictive of a judge's activities. But that isn't really the error here. The error in that opinion is that there's nothing that clearly states that is -- unless I'm missing something --

Q It's vagueness.

A Pardon?

Q It's vague. That's the problem.

A Well, that's right. And judges should be judged, just like everybody else, without vagueness. And who gets the benefit of the doubt? The defendant.

Q I mean, if they're going to take your job away from you --

A If a judge is going to be held accountable or a defendant is going to be held accountable or a party in suit is going to be held accountable, they must know -- it's a fundamental percept of our law -- they must know what it is they're not to do. And in this case, there's nothing in here that says to me clearly, "You shouldn't write an article critical of the Warren Commission."

Q The Warren court.

A The Warren court. Quite the contrary.

- PAGE 67 -

The more I think about it -- it's one thing to be criticizing your own judges or your state judges, perhaps. But when you're criticizing a system that affects the whole administration of justice, I would hate to think the judges would be -- who better to comment on it? . . .

* * *

Q Okay. You're a judge presiding over first appearances. It's a crowded courtroom. There's a defendant who is charged with stealing pornography and beating up police officers. He comes into court. And you adjourn court. And as you are walking back to your office, you see him standing just outside the open courtroom door, in the hallway, yelling at the top of his lungs, "I want a f-u-c-k-i-n-g lawyer."

Okay. You reconvene court. Your charge him with contempt of court, ask if the public has heard this, and find him in contempt of court, sentence him to jail. Do you believe that would be a violation of the Code of Judicial Conduct?

- PAGE 68 -

A No. I would hope not. And that even assumes that I disagree or think that the judge was wrong. That is certainly within the framework of discretion, certainly. Now, we may disagree with what the judge did or the way in which he did it, but nobody should criticize a judge for taking that kind of action. That's for appellate review or for a rule later to come out, saying that it's inappropriate.

Q That's another thing I've been charged with.

A No. No. I mean, there are all sort of problems in there. I mean, is it direct or is that contempt and -- but those are matters, you know, within the broad discretion. I would hate to see a judge -- even though the judge acted wrongly, in my judgment, or even -- it's within the broad framework of discretion, and I think it's appropriate to say that we've got to view this in two ways.

There's appealable matters, and there's violations of the Code of Judicial Conduct. This seems to me a matter that ought to be handled on appeal and not as a violation of the Code of Judicial Conduct. I don't see where -- I mean, what's the standard? Must it be proved beyond and

to the exclusion of every reasonable doubt the judge should have know that this was wrong? If that's the standard, then clearly the judge is not wrong. Or is it reasonable suspicion? Still the judge is not wrong. What's the standard?

Q I don't know. I know I'm not going to let pornography thieves yell the F word through an open courthouse door. I know that.

A Well, I wouldn't have, either. And if, as a judge, we don't follow the proper procedure and we charge it as a direct when it's indirect, or it isn't considered contemptuous, or it comes within the framework of freedom of speech or what have you -- well, fine, reverse and send it back. But to say it's a violation of the Code of Judicial Conduct, I would say no. It would be a shame if it was.

* * *

- PAGE 70 -

* * *

Q Okay. You're presiding over a violation

- PAGE 71 -

of probation hearing. The defendant states that the reason he has violated his probation was that he didn't have a real job, a paycheck job. You place him back on probation, and you say, "Sir, I'm going to make it a condition of your probation that you get a real job, a paycheck job." Do you believe that would be a violation of the Code of Judicial Conduct?

A No, absolutely not.

Q This is another thing I've been charged with.

A Well, that's incredible. I mean, just assuming for the sake of argument the judge was wrong, I can't imagine that's a violation of the Code of Judicial Conduct, unless -- you know, there's nothing in here that says you can't make somebody go get a real job when obviously that's not in here. If they've hung their hat on something, they've hung their hat on something that's very vague, to say that's a violation. It may not be what we agree with or it may not be right, but it's certainly, I would hope, not a violation of the Code of Judicial Conduct. It's certainly a vague canon that they've hung their hat on.

* * *

93-713

Supreme Court, U.S.
FILED
NOV 5 1993
SUPREME COURT, CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME THREE

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

198 pp

INDEX TO APPENDIX

Document	Description	Page
	VOLUME ONE	
1	Opinion of the Florida Supreme Court In Re: Judge Graham	2
2	Findings of Fact, Conclusions of Law and Recommendation for Removal	19
3	Judge Graham's Proffer to an Empty Courtroom	63
4	Excerpts from the Record Demonstrating the Conduct of the JQC During the Proceedings	71
5	Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings	97
6	Excerpts from the Record Where Proffers were Denied	125
7	Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner	173
8	Affidavits Related to JQC Misconduct	180
9	Excerpts from the Record Supporting Reasons for Selective Prosecution	191

VOLUME TWO

10	Federal Questions Preserved	213
11	Excerpts from Deposition of County Court Judge Woodrow Beauchamp	359
12	Excerpts from Deposition of former Circuit Court Judge Harry Lee Coe	381

VOLUME THREE

13	Excerpts from Deposition of former Chief of Justice of the Florida Supreme Court Raymond Ehrlich	408
14	Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992 (Exhibit 126 of Show Cause Response)	423
15	Excerpts from the Report of the Bench/Bar Commission, January 1993.	427
16	Opening Statement of Judge Graham	436
17	Closing argument for Judge Graham	445
18	Excerpt from Show Cause Response	557

VOLUME FOUR

18	Excerpt from Show Cause Response (Continued from Volume Three)	601
19	Excerpts from Judge Graham's Reply to Reply	655
20	Letter from Brad King to Florida Judicial Qualifications Commission with attached newspaper editorials	657
21	Notice of Formal Charges	666
22	Amendment to Notice of Formal Charges	688
23	Excerpts from transcripts of the proceedings	698
24	Excerpts from transcripts of the pre-trial conference	722
25	Excerpts from Transcripts of Proceedings Before JQC July 31, 1992 (Second Rule 6b hearing)	746
26	Answer to Affirmative Defenses and Motion to Strike Demand for Jury Trial	756
27	Order Granting in Part Motion of Limine and Limitation of Witnesses	759
28	Florida Judicial Qualifications Commission Rules	762

29	Listings of Judicial Disciplinary Codes and Procedures by State	776

VOLUME FIVE

30	Fourth Amended Motion to Dismiss	800
31	Florida Constitutional Provisions	867.5
32	Applicable Excerpts of the Florida Code of Judicial Conduct	874.5
33	Wisconsin Statutes	878.5
34	Public Response to JQC Proceedings Excerpts from Exhibit to Show Cause Response #174	884
35	Public Response to Formal Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108B	898
36	Public Response to Adverse Publicity Prior to Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108A	907
37	Motion in Limine dated February 18, 1993	916.5
38	News Article, Citrus County Chronicle, Sept. 15, 1988 (Judge says some attorneys act goofy)	934.5

39	Motion for Continuance dated December 18, 1992	937.5
40	Motion for Continuance dated January 13, 1993	961.5
41	Resume of Judge Graham	971.5
42	Excerpts from Transcript of Proceedings before the JQC May 18, 1992 (First Rule 6b hearing)	975.5
43	Motion for Continuance dated February 10, 1993	983.5

VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

DOCUMENT 13

Excerpts from the Deposition

of

Raymond T. Ehrlich
(former Chief Justice of the Florida Supreme Court)

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

SUPREME COURT NO. 80,273

STATE OF FLORIDA

COUNTY OF DUVAL

Deposition of RAYMOND EHRLICH was taken on behalf of the Respondent herein, pursuant to Notice of Taking Deposition, at 2000 Independent Square, Jacksonville, Duval County, Florida on Wednesday, January 13, 1993, at 4:05 p.m., before Charlotte D. Meenaghan, Registered Professional Reporter and Notary Public in and for the State of Florida at Large.

* * *

Hypothetical 80-81 -- did I skip ahead -- no, okay. Hypothetical 80-81, you want -- you've got a complaint against the local auto dealer and you've got some personal stationery at home, okay. It has your name, Judge, Judge Ehrlich at the top and you want to write a letter complaining about the work they did on your car.

Can you send that complaint letter -- would it be a violation of the Florida Code of Judicial Conduct to write a complaint letter to the garage on your personal stationery with you so, so designated?

A I can't -- I don't know, sir.

Q You don't know the answer?

A No, sir. I wouldn't -- just predilection I wouldn't do it but I'm not sure that it's a violation of the code.

Q The committee was pretty unanimous that that would be wrong.

A Maybe.

* * *

Q This is Hypothetical 981C.

Okay. You're a justice -- you're a Florida Supreme Court Justice but times are bad or something because your wife needs to work, okay. She needs a spare job and she wants to work for the court reporter, the official court reporter typing transcripts of the proceedings in your court -- well, we better ask you to be a circuit court judge if you can for a few moments instead of a justice. You're presiding over trial proceedings, they're transcribed -- they're reported and your wife wants to work for the court reporter typing the transcriptions.

Would that be ethical for you to allow her to work in that capacity?

A I seriously doubt it.

Q See, on that one the Ethics Commission told the judge that, four of them said it's perfectly okay and one of them said it's inadvisable and four expressed some strong reservations.

- PAGE 38 -

* * *

You have also been - Hypothetical 82-6. You're the same judge and now you are invited to lecture to a group and be paid for this lecture about landlord-tenant law to a group of, they are not attorneys but they are individuals who are interested in that topic.

- PAGE 39 -

Can you -- would it be a violation of the Florida Code of Judicial Conduct to lecture to that particular group and be paid for it?

A It's certainly wrong, it should be wrong and most likely was in contravention of some provision of the code.

Q Well, Judge -- Mr. Ehrlich, this time the board was of the unanimous contrary opinion. They think this would be okay. And I'm not trying to embarrass you.

A No, you're not embarrassing me at all.

Q You understand, to me this is all an intellectual pursuit and I'm not try to embarrass you, you understand?

A You're not embarrassing me at all.

Q I hope you trust that I'm not trying to embarrass you because I can, I can assure you that I would -- I could do not better at answering these things, and that's, that's exactly my position with the Florida Supreme Court. You can't, you cannot figure these things out, no one can.

- PAGE 42 -

* * *

Q This is a rather -- this is another complicated Hypothetical, 82-14. Many years ago when you were still an attorney you purchased a vacation cottage along with another attorney, you and he bought it together, then you became a judge -- oh, you bought the property and you were going to build a vacation cottage but that never happened and you just still own the land together. It's still unimproved land. The attorney who owns his real estate with you has become a partner in a major trial firm.

- PAGE 43 -

Is it proper on the Florida Code of Judicial Conduct for you to rule on matters involving that attorney or the law firm which he is associated with?

A I think it would be unless you made a full disclosure, if you told people who are in front of you what the circumstances were and that you would step down if any of them had an objection. I think it would be improper to absent that. It might be improper even -- period, I don't know.

Q Okay. The committee, the committee on standards of conduct judging governors -- governing judges stated it's not unusual for friends to go together in the purchase of property, whether that property is a vacation cottage or sailboat. There is no requirement for recusal.

- PAGE 48 -

* * *

You're a circuit judge -- excuse me, Hypothetical 83-5A. You're a circuit judge who does first appearance duty on weekends. First appearance is when they have to appear within 24 hours for setting bonds and establishing probable cause, and under the current rules they have to have it within 24 hours so the circuit and county judges have to rotate on the weekends to cover it.

You perform your first appearances in the courthouse, which is usually empty at the time of first appearances. The -- on several occasions one sheriff's

- PAGE 49 -

deputy has showed up with numerous defendants. You're concerned about his safety because when you leave the courthouse, you're leaving a sheriff's deputy with three or four inmates all alone in an empty courthouse. You have instructed them on numerous occasions to bring at least two guards to the court proceedings for the safety of the guards; they refuse to do so.

You inquire if it would be a violation of the Code of Judicial Conduct to instruct them that it was a direct order of the court and you would be held in contempt if you did not bring at least two guards when you have more than one inmate?

A I don't know.

- PAGE 50 -

* * *

Would that be a violation of the Code of Judicial Conduct for you to require male lawyers to wear neckties.

A I've heard of it being done. I don't know whether it violates the code or not but I would think not.

Q Would it be a violation of the code of conduct to require them to wear suits as opposed to slacks and leather jackets?

A The same reason -- the same thing. I think he could probably, probably require it.

Q Require suits as opposed to leather jackets and --

A Require it -- as opposed to a leather jacket, yes.

Q As opposed to slacks and leather jackets?

A Yes.

- PAGE 51 -

Q The, the -- that hypothetical expanded one more step. If a judge required suits or, or at least dress jackets and slacks and an attorney appeared in a leather jacket and he offered his own jacket, suit, you know, fabric jacket to the attorney to appear in court, would that be a violation of the Code of Judicial Conduct?

A I don't -- I'm not sure whether it is or it is not but I think the judge would be acting within -- I think the judge would be acting with propriety.

Q What if the jacket was perhaps a little too small for the attorney, do you think that would change the scenario?

A What's too small for the attorney?

Q Say the jacket was maybe two inches -- was too short on his arm.

A You mean the one that the judge was giving him?

Q Was lending him.

A Well, I don't -- you mean, he wouldn't let him wear it?

Q No, he offered it -- he let him wear it but it was a little too short.

A I don't know what -- so what.

- PAGE 67 -

* * *

BY JUDGE GRAHAM:

Q Mr. Ehrlich, can you identify the first page of Composite Exhibit 1?

A Yes, sir, that's my signature.

Q And is that a letter that you wrote? Did you --

A Yes, sir.

Q Did you draft that letter?

A Yes, sir.

Q Can you tell me all the factual circumstances around how it came about that you would write that letter?

A Well, I have no independent recollection of this event. I can only surmise as to what transpired by reading my letter.

It appears that someone who did not want to disclose his or her identity wrote me complaining about the conduct of an attorney who was seeking to be elected to the position that you held at that time. And it was not

uncommon for us to get letters from lay people who don't know what our role really is, and there was nothing that I was going to do abut it so I passed it on to the Bar. If there was some violation -- cause the conduct -- or misconduct, alleged misconduct was being done by a lawyer and that would be within the bar's province and I passed it on to Mr. Berry. I had called him before and said I didn't know what to do with it and it looked to me like it belonged to the bar and he said, Well, send it over. And I did and that's the last I heard of it until you called me.

Q Okay. I may be able to help you with reviving a refreshed recollection because I took the deposition of the individual who wrote this letter to you.

Are you familiar with the -- as the justice for the, as the chief justice of the Florida Supreme Court, were you familiar with the chief judges of our judicial circuit?

A I was acquainted with them all at one time or another because we had meetings. I knew who they were but I couldn't pick a lot of them out of a line up. I dealt with the from time to time. I was supposed to have some contact with them at least once every year to survey their need for judicial resources. That's about all I can tell you.

Q I took the deposition of the individual that

wrote this letter, Page 2 of the exhibit. This is chief, this is -- the chief judge of the Fifth Judicial Circuit wrote this letter to you, his name is William Swigert.

Does that bring back any more recollection?

A No, sir.

Q So you don't remember Chief Judge Swigert writing --

A I remember Swigert but I don't remember --

Q Do you remember him writing this letter?

A No, sir.

Q Okay. This letter had his name on it, though, when it reached you, correct? It's Page 2.

A I'm, I'm reasonably certain it did because I said in my letter he did not want his identity disclosed and I was X'ing it out or some such.

Q Okay. Now, are you aware that -- you probably are not aware of the fact that at the time -- did he make you aware of -- are you aware that -- well, you may be aware of this. Are you aware of the fact that -- well, let me rephrase this question. I'm trying to remember the deposition.

Is it true that Judge Swigert in his conversation with you explained to you that I had given him this information but that Judge Graham did not want a bar complaint filed against Mr. Horn; is that accurate?

A I'm not --

Q Okay. Would you like me to rephrase it?

A Yes, sir, or repeat it.

Q Is it accurate, is it accurate that Judge Swigert told you that I had sent him this attached material and had asked him not to file a bar complaint against Charles Horn?

A I don't know that I had a conversation with, with Judge Swigert. I have no recall -- unless you can refer me to something that would refresh my memory, I don't know that I had any conversation with the judge.

Q All right. Have you, have you ever passed any other complaints on to the Florida bar about attorneys?

A I'm guessing, I really have no independent recollection. I have no -- I can not answer it. If I had to hazard guess, I'd say it's more likely that I did than I didn't.

Q But you couldn't remember any --

A Oh, no.

Q -- particular ones?

A No.

Q Okay. Do you -- of your knowledge did any other justice ever pass along a complaint to the Florida bar?

A I don't know.

Q Okay. The Florida Supreme Court has characterized the JQC as an arm and intermediate agency of

- PAGE 79 -

Court; that's the way the Florida Supreme Court has described the JQC.

If you were -- if a justice of the Florida Supreme Court becomes aware of conduct on the part of a judge that appears to be unethical, would a, would a justice of the Florida Supreme Court hesitate to bring that matter to the attention of the JQC?

A I can't speak for others. I can't speak for others.

Q Okay. Would, would you have as a justice?

A No, I don't think I'd have any problem bringing it, bringing it to the attention of the JQC.

* * *

DOCUMENT 14

Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992

[JERE TOLTON, CIRCUIT JUDGE, LETTERHEAD]

June 4, 1992

Honorable Gary G. Graham
County Court Judge
One Courthouse Square, Room 215
Inverness, Florida 32650-4802

(OPINION NO:92-22
(CANONS 1-4
(Action filed by
(Court

PERSONAL AND CONFIDENTIAL

RE: Committee on Standards of Conduct Governing Judges - Your inquiry dated April 3, 1992.

Dear Judge Graham:

You inquire whether you may file a Writ of Mandamus with the Florida Supreme Court requiring the appellate division of your circuit to provide official court reporters to be either present at all County Court proceedings, or be available to transcribe electronically recorded proceedings.

Three members of the committee responded there is nothing wrong in presenting a legal challenge to improper practices within your circuit. In fact, these members indicate there may be a duty to do so in order to improve the administration of justice and to preserve the integrity of the Judiciary.

Three other committee members felt you should not take this action. These members indicated a public appeal to the Supreme Court for relief of a rule, with which you disagree, damages the integrity of the Court, the intent and spirit of Canon 2, and the express provisions of Canon 3(B)(1). In short, these members suggested you work within the administrative framework of your circuit to change you present procedure.

[GARY G. GRAHAM NO. 91-145
EXHIBIT 185.126 EVIDENCE]

Finally, four members stated you were seeking legal advice with respect to participating in a lawsuit, therefore making a committee response inappropriate.

In summary, the committee is divided as to a response to your inquiry and no majority exists for any of the positions mentioned.

The committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the committee may be evidence of good faith on part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions issued by the committee. Petition of the Committee on Standards of Conduct for Judges, 327 So2d 5 (Fla.1976)

With regards, I remain,

Yours very truly,

/s/ Jere Tolton
Jere Tolton, Chairman
Committee on Standards of
Conduct Governing Judges

JT/mc

cc: All Committee Members

Participating Members: Judges Tolton, Green, Levy, Dell, Booth Doughtie, Goldstein, Farina, Rushing, and Clarke, Esq.

All reference to the inquiring judge is deleted from the copies sent to the following individual:

Mr. Sid White, Clerk of the Supreme Court of Florida
Judson Orrick, Managing Editor, The Florida Bar

Brooke S. Kennerly, Executive Director, Judicial Qualifications Commission

Hon. Walter K. Stapleton, Chairman, Ethics Advisory panel of the Judicial Conference of the United States

Cynthia Grey, Director, American Judicature Society

Ms. Jean Underhill, Librarian, Broward County Law Library

Mr. Robert Wallace, Librarian, Dade County Law Library

Ms. Joan D. Cannon, Librarian, Supreme Court of Florida

William D. Wilkinson, Court Administrator, Lee County

Hon. Thomas H. Barkdull, Jr., Third District Court of Appeal

Lynda Glyman, Esq. Center for Professional Responsibility, American Bar Association

Hon. Charles McClure, Chief Judge, Second Judicial Circuit

Office of State Court Administrator, Legal Affairs & Education

DOCUMENT 15

Excerpts from the Report of the Bench/Bar Commission, January 1993

A 428

The Necessities of the Times Facing Challenges in the Legal System

The Report of the Bench/Bar Commission

A Commission created by

The Supreme Court of Florida

and

The Florida Bar

January 1993

GARY G. GRAHAM NO. 91-415

EXHIBIT 197 EVIDENCE

INTRODUCTION

James Fox Miller, then President of The Florida Bar, wrote in the October, 1990 edition of The Florida Bar Journal "Our judges have problems, some of those problems are with lawyers. Our lawyers have problems, and some of those problems are with the judges. Both judges and lawyers have problems with the 'system' which is funded by the Florida Legislature."

Recognizing these problems, President Miller borrowed words from William Shakespeare,

> And do as adversaries do in law, Strive mightily, but eat and drink as friends.
>
> *The Taming of the Shrew, I, ii, 281*

and convinced the Supreme Court of florida and the Florida Bar to create the Florida Bench/Bar Commission (the "Commission") to work towards solving these problems.

Miller did not say so explicitly, but the members of the Bench/Bar Commission knew not only that judges and lawyers have problems, but to a large extent they are or represent those

who make the problems. Miller had heard about and experienced first hand the loss of civility in the practice of law, and heard the frequent allusions to "Rambo litigators."

About half the Commission's members were judges and half attorneys. The Commission included representatives from appellate, county, circuit and federal courts, and the Florida Supreme Court. A public defender, a state attorney, two former Bar presidents, a member of the Florida Senate, and a member of the Florida House of Representatives participated. The members of the Commission and their biographical sketches are listed in Appendix C.

At the beginning, we had a great many ideas about what the problems probably were, what the solutions might be, and we outlined both large and small problems. But we had no coherent plan. So we began by trying to determine what were the fundamental concepts at hand. We offered a forum for everyone seeking to improve the justice system, including those who had no one else to listen to them.

We held a retreat with the Board of Governors of The Florida Bar and members of the Florida Supreme Court. We listened to

experts, we listened to the general public, those who, although not members of the system were nevertheless affected by its actions. We listened to judges. We listed to lawyers. We sent questionnaires to judicial candidates. We listened to law school deans. We listened to members and staff of the Tax and Budget Reform Commission, Judicial Nominating Commissions, the

Judicial Qualifications Commission, the Board of Bar Examiners, the Office of the State Courts Administrator, an attorney for the Colorado State Commission for Judicial Performance. We examined literature we received, some requested, some unsolicited. And we listened to each other a great deal, because the underlying concept of this Commission was that judges and lawyers need to talk--to communicate with each other about their problems, and together to talk to members of the Legislature about the system. We listened to each member because Commission members were the source of much of the information about perceived problems.

The Commission found, not unexpectedly, that many of the assumptions underlying the creation of the Commission were true:

the legal system and the practice of law have changed--and the perception is that it has changed for the worse.

We did not propose a solution for every problem we discussed, and some proposed solutions were rejected. Some solutions were previously proposed or under consideration by agencies having the power to act upon them. Some could not be dealt with until other issues had been resolved. Some could not be considered because of practical considerations. Some could not be considered because the task was overwhelming, and we need to be selective.

A full set of the minutes of the Commission meetings and audio/visual recordings of all public hearings are on file with the Supreme Court of Florida.

Appendix A contains some very significant issues the Commission did not consider. Some of these issues were not discussed at all, some only superficially. Several issues were beyond the expertise of the commission, but their resolution is nonetheless vital to the integrity of the justice system.

ACKNOWLEDGMENT

The Commission acknowledges with gratitude the work of Dale Ann DeHart and Mike Jay Garcia, staff members of the Florida Bar, for their untiring efforts in doing those things necessary for the Commission meetings to be effective.

was the failure of judges to rule expeditiously.

Recommendation 3

The Judicial Qualifications Commission should be bifurcated into two separate and distinct bodies. The initial body should be the Judicial Investigative Commission. It should be responsible for investigating and accusing. I should have its own staff and its own general counsel. The general counsel or the counsel's designate should be assigned the task of presenting evidence to the Judicial Investigative Commission and, if probable cause is found, the general counsel should then prosecute the matter in front of the Judicial Tribunal.

The Judicial Investigative Commission should consist of seven individuals. The composition should include one judge from each level of court (district, circuit, county) appointed by their respective

conferences, two lawyers appointed by The Florida Bar, and two non-lawyers appointed by the Governor.

The Judicial Tribunal should be composed of six individual. The composition should include one judge from each level of court (district, circuit, county) appointed by their respective conferences, two lawyers appointed by The Florida Bar, and one non-lawyer appointed by the Governor. The Tribunal will hear each case and, by two-thirds vote, present a recommendation to the Supreme Court. The terms of the individuals on both Judicial Investigative Commission and the Judicial Tribunal will be four years and will be staggered at the beginning. There will be no allowance for reappointment.

The Supreme Court of Florida should adopt the rules regulating the proceedings of both the Judicial Investigative Commission and the Judicial Tribunal, as well as the filling of vacancies and temporary replacements.

Comment

By combining all powers now vested in one body, the Judicial Qualifications Commission runs the risk of a conflict of interest.

In the interest of fairness and objectivity, these roles should be separate.

Recommendation 4

The Constitution of Florida should be amended to provide the Judicial Qualifications Commission with the power to recommend reprimand, removal or another form of discipline.

Comment

The existing disciplinary remedies available (public reprimand or dismissal from office) are inadequate and unfair not only to judges, but to the public. Other methods of ...

* * *

DOCUMENT 16

Opening Statement of Judge Graham

* * *

JUDGE GRAHAM: I object.

THE CHAIRMAN: The grounds, please.

JUDGE GRAHAM: Mr. Chairman, there is noting in these formal charges that alleges any misconduct for having made poor decisions.

THE CHAIRMAN: Motion granted.

JUDGE GRAHAM: I move to strike that --

THE CHAIRMAN: The motion to strike is granted.

JUDGE GRAHAM: --and ask the Commission to disregard it.

THE CHAIRMAN: The motion to strike is granted.

MR. BOSTIC: Conduct unbecoming a member of the judiciary may be proven by evidence of specific major incidents of behavior or it may be proven by evidence of an accumulation of small, innocuous incidents which, considered together, demonstrate a pattern or emerge as a pattern of hostile conduct unbecoming a member of the judiciary. That comes from Kelly. It is the first

case of this Commission. That proposition has been repeated in several cases throughout the 21 years since Kelly and will be

relevant to this proceeding today.

The object of this proceeding is not to inflict punishment, as we know from the case law, but to determine as to whether one who exercises judicial power is fit or unfit to hold office. And under the provisions of our constitution, the Supreme Court may exclude from the judiciary those persons whose fitness or instability bears a rational relation to their qualifications for judge.

I have the burden. The standard in this case is that we produce evidence that is clear and convincing. It's also important to note that judges are held to even stricter standards of conduct than attorneys. While the ultimate power and authority in these matters rest with the Supreme Courts, your findings of fact, your conclusions of law, your recommendations have traditionally been a pervasive force and been given great weight.

The Florida Supreme Court, in a very recent decision, in the case of Truss, has said they are greatly troubled by conduct

designed to lessen the confidence and the dignity, integrity, and the impartiality of the

- PAGE 87

judiciary; and I suggest to you that that is exactly what we have in this case.

In conclusion, I would say that notwithstanding the respondent's denial -- blanket denial of these charges in his answer, you will find that the majority of the facts in this case are undisputed. You will find that these acts, together with the respondent's conduct during the course of this proceeding, will demonstrate his present unfitness to hold office.

Thank you.

- PAGE 89 -

* * *

. . . That's what this case is all about.

It's about Canon 1. This is what I call the forgotten canon in the Code of Ethics. Not forgotten by me; forgotten by the JQC, forgotten by the judiciary, forgotten by everyone involved in the system.

What does it state? A judge should uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, enforcing, and himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code, all the other things I've been charged with, should be construed and applied to further that objective.

This canon has been forgotten except by me, and that is why all these trivial charges have been brought against me. Everything that

I have done has been done to preserve the integrity and independence of the judiciary, and that is what the evidence is going to show to you.

I'll give you just a little bit of the insight of the other side of the story that you're going to hear.

Without regard to the truth, I have criticized others, including attacking State Attorney Brad King. The evidence is going to show you that Brad King has conducted himself in a manner in which he

has criticized -- rudely criticized -- other attorneys and other judges in this system. It will show where he has participated in plea negotiations which were patently acts of favoritism to individuals who were the daughters of high-placed party officials in Inverness, Florida.

- PAGE 117 -

* * *

The Commission will probably take a break in about an hour and a half or an hour and 15 minutes, so -- if that will help you in the coordination of your witnesses.

MR. BOSTIC: And, Mr. Chairman, several of the people in the courthouse have asked if

- PAGE 118 -

the Commission knows how late we will be working this evening.

THE CHAIRMAN: I will probably be able to give you a better answer after the break. We will try to accommodate everybody's schedules and -- see what Judge Graham's schedule is gong to be and what your schedule will be and try to work it out with the witnesses.

JUDGE GRAHAM: When are we going to convene?

THE CHAIRMAN: We're going to break in about an hour and a half, Judge, and then we'll decide how late we go, when we come back at that time.

JUDGE GRAHAM: Let the record reflect it's ten minutes after. Correct?

THE CHAIRMAN: Well, I was looking at my watch. I was two minutes slow.

JUDGE GRAHAM: All right. There's just one point I want to make just for the record. I was ten minutes late getting back once. Right? The Commission was ten minutes late starting this morning and ten minutes late coming back from lunch. And I'm not complaining. I just want to --

- PAGE 119 -

MR. RHODES: Five minutes, Judge Graham.

JUDGE GRAHAM: Excuse me. I stand corrected. You're only five minutes more late than I am.

THE CHAIRMAN: All right. Mr. Bostic, if you're ready to proceed.

Excuse me. Are these gentleman waiting --

MR. BOSTIC: Mr. Polak is -- he will be my first witness --

THE CHAIRMAN: Oh, I'm sorry. I'm sorry.

MR. BOSTIC: -- Mr. Chairman, and Mr. Fitzpatrick -- Mr. Polak is a custodial witness from the clerk's office and Mr. Fitzpatrick is the attorney for the clerk.

THE CHAIRMAN: All right. Is that your first witness?

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: Would you do me a favor for the Commission so we'll have no problem? When you make a presentation of a witness, if you can, give us a hint as to which count we're dealing with, if it deals with any particular count; and secondly, have the witness spell

their name -- their last name.

MR. BOSTIC: I would say that Mr. Polak is a custodial witness from the clerk's office; relates to almost every count with the admission of a tape or a file.

THE CHAIRMAN: All right. You may proceed.

MR. BOSTIC: Chris Polak.

JUDGE GRAHAM: Excuse me. I wasn't finished with motions.

THE CHAIRMAN: Yes, Judge. I'm sorry, Judge.

JUDGE GRAHAM: I wasn't finished --

THE CHAIRMAN: Mr. Polak, if you'll stand back while Judge Graham makes his motion.

JUDGE GRAHAM: Let the record reflect that Mr. Leonard Damron has been served as a witness in this case, and I would invoke the rule of sequestration of witnesses with respect to Leonard Damron.

THE CHAIRMAN: Mr. Damron --

JUDGE GRAHAM: Judge Damron.

THE CHAIRMAN: Judge Damron. I'm sorry.

JUDGE GRAHAM: Excuse me. Strike that. He's not a judge.

DOCUMENT 17

Closing Argument for

Judge Graham

INQUIRY CONCERNING A JUDGE,

SUPREME COURT NO. 80,273

NO. 91-415
_____/

TRANSCRIPT OF:	RESPONDENT'S CLOSING ARGUMENT
BEFORE:	The Judicial Qualifications Commission
DATE:	February 26, 1993
PLACE:	Citrus County Courthouse 110 North Apopka Avenue Inverness, Florida
REPORTED BY:	Cynthia A. Maciel Notary Public State of Florida at Large

RICHARD LEE REPORTING
Registered Professional Reporters
(813) 229-1588

TAMPA:
501 E. Kennedy Blvd.
Suite 910
Tampa, Florida 33602

ST. PETERSBURG
535 Central Avenue
St. Petersburg, Florida 33701

MEMBERS OF JUDICIAL QUALIFICATIONS COMMISSION PRESENT:

Joseph J. Reiter, Esquire, Chairman
Judge Frank N. Kaney, Vice-Chairman
Ms. Sybil H. Barnes
Judge J. Klein Wigginton
Mr. John D. Griner
Judge Marvin H. Gillman
Judge Natalie Baskin
Mr. Stanley G. Tate
Judge Miette K. Burnstein
Ms. Nancy N. Mahon
Mr. William C. Clark
Judge David A. Demers
Rutledge R. Liles, Esquire

ALSO PRESENT:

Brooks Kennerly, Executive Director

APPEARANCES:

Terrance A. Bostic, Esquire
Special Counsel

Judge Gary G. Graham
Respondent

Joseph F. McDermott, Esquire
Co-Counsel

Roy T. Rhodes, Esquire
Special General Counsel

PROCEEDINGS

THE CHAIRMAN: All right. The Commission is back. Judge Graham, please.

MR. McDERMOTT: Your Honor, I'm going to handle the first part of the argument for Judge Graham.

THE CHAIRMAN: All right. Thank you, sir.

MR. McDERMOTT: If it please the Commission, Mr. Chairman, and Mr. Bostic, I'm Joseph McDermott from St. Petersburg Beach. I represent Judge Graham as to some matters that are pending before the Commission. I'm going to argue essentially the charge that relates to 4-J, the abuse of his office by utilizing Joette Uzar to do personal matters, to conduct a private investigation, to -- essentially to appear on a television program, and I would also like to address some of Mr. Bostic's remarks.

As we start, I'd like to ask Judge Graham to take a tape and run that out to 62 feet -- as far as you can get. And if you can't get out of the courtroom, Judge, just kind of keep running it until you get to 62 feet.

THE CHAIRMAN: It looks like he's going to make a right-hand turn.

MR. McDERMOTT: It looks that way.

Ladies and gentlemen of the Commission, Judge Graham, as you've heard, has been a circuit -- has been a county judge for six years. He's been elected twice. The testimony revealed that he's handled roughly 4,000 cases a year for 24,000 cases in that period of time. That's a rough guess.

There's approximately 25 charges against him, or counts, so to speak. If we count 1/32nd of an inch for every one of those 25 -- for each charge, 1/32nd of an inch -- about three-quarters of an inch -- on his scale of a career of 62 feet.

Mr. Bostic said, "Don't look at the good; look at the bad" -- something to that effect. Judging from what he thinks, he did wrong. I don't think you can do that. I don't think that's your function as members of a Judicial Qualifications panel to ignore the good and just count only the bad, because if we did that, probably there would be no judges,

circuit or county, because I think all of us -- whether judges, lawyers, lay people -- we do make mistakes, as Mr. Bostic suggested to you.

He said -- Mr. Bostic said, "Keep the case in perspective," and that's what I'm asking you to do by the demonstration of the tape. Keep it in perspective.

Charge 4-J. Mr. Bostic read it to you, and he cited some cases in support of it. Used the power and prestige, et cetera, resources of the State of Florida, to conduct a private -- private -- and I emphasize private -- unofficial investigation. In furtherance of this, you have utilized employees of the State of Florida -- paraphrasing -- to get driving records and vehicle registrations. You have not paid for this information.

I agree with the judge that that charge does not seem to encompass the Joette Uzar issue with reference to preparation of a defense of his JQC charges, but evidently we need to address that.

The significant part of 4-J says, "You have not paid for these services, and you directed that State employees keep your

requests confidential from their supervisors" -- confidential from their supervisors. The testimony about that, if you will recall, was Ms. Smith. No, I wasn't here. If anybody is curious as to how I know this, I watched it on videotape and I've read the transcript.

Ms. Smith testified that those were not her words -- not her words -- and that -- she says there wasn't anything secret about it. In fact, she took the list to her superiors and ran whatever it was in 15 minutes and didn't have a difficult time extracting that from the public record.

Some of the Commission asked, "Well, can't we all go down there and pay two or three dollars and get a copy of those records?" Certainly. It's a public record. There's nothing wrong with it. He didn't do it in a courtroom. He asked for it outside in the hall. So I guess -- is asking for it a crime? Is it a JQC or a judicial violation to ask for records? I think not.

And the payment of it. Let's talk about the payment. The clerk's office has

statutes that govern them. Florida Statute 28.19, with respect to service charges; and then 28.231 sets forth how much they can

charge for making copies. And if we go in there and order a copy, if it's not directly related to the case, we can pay a couple of dollars and get it, and that's their charge. But 28.19, the service charges, says, "The clerk shall not be required to perform any service in connection with such inspection or making extracts without payment of the services charged as provided in Section 28.24."

So you have here what? An issue over whether he paid for them or whether they're public or private. That's it. That's what that charge boils down to. And I think the State -- the prosecutor -- tries to say that that's a private investigation when it is not.

The judge -- in cross-examining Ms. Smith, the judge asked her a question on page 1318 of the transcript. "And based on that, you got the impression that I directed you to keep it confidential from your supervisors?"

Answer: "Those are somebody else's words. Those are not my words. I didn't write

those charges."

"So you disagree with that?"

Answer: "I didn't write those charges." That's her answer.

That's Mr. Bostic's case of secret investigation. And again, it's not secret. He's asked her, a public employee, to get some records. There's nothing secretive about that.

The issue of going on television -- oh, there's one other thing that I wanted to refer you to. On page 1320, Ms. Smith's testimony, "Wasn't there one point when your supervisor requested you to put all of this private-investigation activity, all of this secret activity, into a written statement?"

Ms. Smith's answer: "What secret activity?" The testimony from the witness refutes the charge in and of itself.

Mr. Bostic charges again, with this Count 4-J, as a private investigation personal to Judge Graham. And as part of that evidence, he introduced -- or there was introduced -- a tape recording of a television program that he made on the local cable television channel.

Ladies and gentlemen of the Commission, if that is a private investigation, then I don't know what the word "private" means. He's public. He's on television before, I think the testimony

revealed, some 8,500 subscribers to the TV station -- whatever. That's a judge going on there and sitting in an interview with a moderator on a talk-show format and talking about the investigation that he was aware of -- I guess the security had been breached, and the word around was that the JQC was investigating and using Judge Dean's facilities -- and he answered charges -- because I guess lawyers were going out and talking about what some of the testimony before you was -- and he's simply answering that. And if that isn't an exercise of free speech, again, I don't know what is.

And it's certainly -- you can't categorize that as a private investigation of a judge. And when he says, "Public, if you know of anything, if you have any knowledge of anything wrong in the judicial administration or in the system, call me at my office." There's nothing private about that. It's

public. He's a public official. And I don't know of anything in the law that prohibits him from doing that.

And yet, Mr. Bostic seems to hang a black cloud over Judge Graham that that was somehow improper conduct. You may not agree with it, but it wasn't improper. It wasn't improper to stand

out in front of the public -- not private, to be out in front of the public -- and say, "Folks, this is what I want. If you know something, let me know."

Now, I think we all would have to be naive to think that there isn't some political turmoil in this county between State Attorney Brad King, Sheriff Dean, and the judge. There's -- political not from a party standpoint but a hassle back and forth. They don't like each other. Don't like each other. And yet, we have heard testimony from Brad King that he made a mistake in accusing the judge of a crime. Made a mistake.

Sheriff Dean -- I heard his testimony in here. He gives security to everybody over in this building, but somehow, if you're a county judge over here, you're expendable. County

judges just aren't quite as important from a security factor to him. And he seems like a nice fellow testifying here, Brad King seems like a nice fellow testifying here, but they've made mistakes.

Judge Graham, no doubt, has made some mistakes in this proceeding representing himself perhaps. In this proceeding, by what he's done on the bench, he's offended some folks. No doubt

about that. But the issue is: Is the offensiveness or the personality quirks of the judge -- does that rise to a level where you have to remove him, as suggested by Mr. Bostic? We think not.

The issue -- serious issue about Joette Uzar's testimony. Again, and Judge Graham brought this out, he has been charged as a judge. In Re Inquiry Concerning a Judge. Can he not legitimately use the offices of that judgeship to defend himself? Mr. Bostic said there's nothing in the code, there's nothing in the statute, there's nothing in the rules, that authorizes him to do that. What does our knowledge of constitutional law tell us? If something is to be prohibited, we're supposed to be put on some kind of notice of it.

The comparison with the credit card just doesn't fly. It's different. Using a credit card to do your personal business is stealing. It's, you know, simply stealing from the government, using that money. Using his secretarial facilities, his assistant's facilities, to type up pleadings in defense of this -- there's nothing wrong with it, and I submit to you there's nothing that prohibits it, and that's what we're concerned with; not whether or not, as Mr. Bostic suggests, there's nothing in the rules that allow it.

Well, if there's nothing in the rules, then he shouldn't be convicted of it, should he? The Supreme Court maybe ought to make some guidelines and say, "Folks, from now forward, if you're a judge and if you're charged with a JQC violation, don't utilize these facilities." They can spell it out. Or they can say, "Well, gosh, a judge doesn't have the resources, particularly in a multiple-count charge -- multiple-count indictment, if you will -- to be able to go out and afford to prepare those documents and get those documents in his

defense," as -- Judge Graham pointed this out. That would be a chilling effect to consider that. If judges had to go out and hire personnel and had to pay for the records of something of this nature, it would be extraordinary and not fair. Simply not fair.

Thus we feel the evidence doesn't show anything about a secret activity. It doesn't show anything other than a legitimate exercise of a First Amendment right to free speech to go on television and ask for comments. That's not a private investigation, as alleged.

And Mr. Bostic's correct. Clear and convincing evidence must be submitted in order to prove somebody guilty of a judicial violation, and they have not as to that charge. The 4-J charge -- now, certainly he admits that he used Ms. Uzar, and she testified to that -- there's no question about that -- thinking that it was proper. Thinking that it was proper.

The cases that were cited are kind of interesting. The Judge Boyd case that he cited -- Judge Boyd was a Supreme Court justice who, on the golf course, played with somebody who

had a case that was about to come up before him, and somehow somebody slipped him a confidential memorandum, and it came out. Judge Boyd was reprimanded for that conduct, and they, in a sense, said -- the court, on 308 So.2d, page -- it looks like 20 -- Nevertheless, we do not find from the evidence clear and convincing proof of Judge Boyd's dishonesty or moral turpitude in this inquiry warranting his removal from office. We do not find that he was corrupt or venal or that he accepted any bribe," et cetera.

Mr. Bostic correctly points out that the constitution has changed since that; that you don't have this magnificent word of

"malafides" and scienter -- the other word of "scienter" -- to remove a judge. That's -- I guess maybe based on one of those decisions, the constitution was changed. You don't have to have it, but it sure is interesting to have it, isn't it, because it kind of gives you a little bit of a handle on if a judge is bad or if he's thinking of ill will or corrupt motives. So you don't have to have it, but it would certainly be helpful in making a judgment

of whether a judge is so bad that you've got to take him out of office. There is nothing in this evidence that I have seen or in the transcript that would indicate any ill will or corruption or scienter, bad motive. Nothing of that.

Judge Taunton's case, which gets back to the privacy issue -- and I believe that Mr. Bostic read the charges against him -- one of many charges against him -- about this secret investigation. Judge Taunton was suspended -- not suspended, but given a reprimand -- based partly on the private investigation, and that was -- he was like a private State Attorney. He was running his own little investigative office in and of itself, and then he publicly accused officials of crimes.

I don't see anywhere on that videotape of Judge Graham where he made a statement on the three-hour program accusing anybody of a crime. So therein lies a substantial difference: The privacy versus the public, and there's no accusation of crime; and there certainly isn't anything in that Taunton decision which would reveal that it is comparable to Judge Graham's

conduct here.

The other case, Judge Kelly's case. Very familiar with Judge Kelly's case. I worked on that case. I submitted a brief to the Supreme Court in JQC No. 1. We're probably here today as a result of Judge Kelly.

Judge Kelly, as history would indicate, was impeached by the House of Representatives, and he went on trial before the Florida Senate, and he was acquitted.

Well, everybody figured out, as a result of that, the impeachment process was a little bit cumbersome, so let's create something a little bit different; hence, JQC follows. And as life would have it, Judge Kelly is JQC No. 1, which involved similar matters or

some of the same matters that were raised in the impeachment proceeding.

What Mr. Bostic did not inform you is that that is a close decision, a very, very debatable decision, in Judge Kelly. Four justices said it was misconduct, what Judge Kelly did. And basically Kelly was accused of filing a petition in the court records saying the administration of justice in Pinellas and Pasco is not

good, we ought to do it this way, let's change the system, and criticized other judges in doing it. Was elected chief judge. Got removed by the other judges and said, "Let me back on, and I'll be good," and then they kicked him off again.

So this clash between the members of the judiciary in that circuit and the court -- the court -- Judge Boyd, one of those four, who ends up later in the JQC -- he's one of the majority. The dissent, to me, is a work of art by Justice Ervin.

And Mr. Bostic said that Judge Kelly is precedent. Well, he's right. It is a majority decision. It is precedent. It is binding. We won't quarrel with that. But he said that free speech wasn't really the issue. And that's what -- I think it was -- I can't remember the

judge that decided it -- Atkins -- Judge Atkins says, "This isn't a free-speech issue. It's how you say it, how you get up on the soapbox and say it."

And Judge Ervin comes out and says, "The constitution of the United States, the First Amendment, gives you the right -- a judge the

right -- to get up in any public forum and voice his opinion, because that's part of the political process." He said -- Judge Ervin -- "Tragic implications could result from the precedent of discipline of Judge Kelly for speaking out on the need for court reform. The people of Florida will suffer if their judges must restrict their public statements to uncritical banalities in order to avoid the threat of similar sanctions. The right to disagree with others in matters of governmental policy is one of the cherished rights of American citizenship. It cannot be watered down by a board of censors or subjected to the possibility of sanctions that make the exercise a fearful prospect."

The courts exist to serve the people. If the courts are not operating as efficiently as humanly possible, then the people have

the right to hear this from the individuals who are best able to tell them: the judges. "If the First Amendment does not protect a judge's right to speak in circumstances such as these, then we are bound to have in Florida a timorous lot of judges lacking in independence, afraid

of their judicial shadows, and fearful to exercise conscientiously the right to speak out in favor of judicial reform."

Mr. Bostic said that if you don't recommend a removal of Judge Graham, that you'll be giving him a license to commit further judicial misconduct.

I woke up this morning over on the Chassahowitzka River. It was raining on the roof. And I woke up, and I thought, "This is a beautiful county. It's got lots of rivers, seven of them, running through it. It's paradise." And a lot of the people that live here just simply don't know that. They're having a little bit of a turf war over a brick courthouse that probably won't be here another hundred years from now. Brad King, Sheriff Dean, Judge Graham -- a turf war. And I thought of that rain hitting the roof, and I thought, "Well, you know, isn't that nice that it's a cleansing -- a

cleansing -- of the county." And I thought that the JQC, the Judicial Qualifications Commission, can act in that same capacity, a cleansing -- a cleansing -- by your decision, to cleanse the problem and

not by removal of anybody from office.

Should Brad King be removed for accusing somebody wrongly of a crime about a postcard in a campaign? Should Sheriff Dean be removed from office for irresponsibility in not protecting Judge Graham over here when he protects everybody over here? I don't think so. Those are misjudgments. Those are mistakes.

Neither should Judge Graham be removed. He was elected by the people of this county. Sheriff Dean was elected by the people of this county, and so was Brad King. And that's part of the political process.

And if Judge Graham wants to go on the air and discuss problems with the administration of justice or what he figures is a good ol' boy system -- there's nothing wrong with him doing that. You may not agree with it, but don't take away his right to do it,

and don't take away his right to office, and don't forget the good--the number of cases that the's handled in comparison to these charges.

Thank you.

JUDGE GRAHAM: Members of the Commission,

my name is Gary Graham, County Court Judge for Citrus County.

The first thing I would like to do is correct a misstatement about the evidence. I have to do it right away because it's something that can't be preserved on the record because we did not transcribe the tape of my public appearance on the Cable-Vision program.

Mr. Bostic has repeated the statements of the husband of a disgruntled employee who lost her job when I switched probation departments. He has said that I criticized other officials, including Sheriff Dean and other judges and attorneys, during that program. That is why I wanted you to watch that program in its entirety. If you will do that -- I did not criticize them. I said -- I repeated their criticisms of me.

And that is how topsy-turvy the things in Citrus County go. If I get on the air and voice their criticisms of me, Sheriff Dean saying, "Gee, I used to not have any problems with Leonard Damron letting bad guys out of jail," that's considered a criticism of him, repeating his criticism of me. If I say Judge

Edwards said I shouldn't be a judge, that's a criticism of him repeating his criticism of me. If I say Judge Thurman, sitting right there back in the back row, has said publicly that -- implied publicly that I'm crazy, that's turned around and it's made to sound like Judge Graham is criticizing Judge Thurman.

Please listen to that tape. I did not criticize any of those individuals. I reported their criticisms of me.

What is this case all about? This case is about Canon 1. Canon 1 says, "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objec-

tive." In other words, every other portion of this code should be construed to support Canon No. 1, the independence and integrity of the courtroom.

Mr. Bostic has said, "No, no, Judge

Graham. We haven't forgotten Canon 1. We've recited it in most of the charges against you." No, he's not forgotten Canon 1. What has been forgotten is the meaning of integrity and independence. And over the 25 years of the evolution of these type of proceedings, independence and integrity has evolved into meaning a judge who sits as silent as a sphinx on the Nile and blinds himself to the misconduct in his court and keeps his mouth shut to improper conduct so that there is no controversy surrounding his office. That's what it's evolved to.

I don't believe so, folks. I believe these words. I believe in the independence and integrity of the judiciary. And every single charge that has been leveled against me is as a result of that belief and the courage to live up to it.

This case is -- this is what this case is about -- and I think Counsel must have been reading my mind as we separately

prepared these arguments. The dissent in Kelly said, "If the First Amendment does not protect a judge's right to speak in circumstances such as these,

- PAGE 24 -

then we are bound to have in Florida a timorous lot of judges lacking in independence, afraid of their judicial shadows, and fearful to exercise conscientiously their right to speak out in favor of judicial reform" -- and, I may add, the right to enforce the integrity of the courtroom and the conduct of the people appearing before it. If this Commission sanctions me or removes me, the independence of the judiciary is gone.

Let's look at the evidence a little more closely. Charge 1-A. Mr. Bostic has told you that he would prove to you that I said attorneys were like little children, acted goofy, made faces at you, and that you should put them in jail so they could learn to read the law books. Has he proved that to you? I've gone over the evidence. The only proof of this charge is the testimony of Cokely and Exhibit R-184-32.

Madame Clerk, may I see R-184-32? Here it is. I found it.

THE CLERK: It's not in evidence, sir.

JUDGE GRAHAM: Madame Clerk, can you find me the newspaper article that we added to our

list yesterday? It was the --

THE CHAIRMAN: 219? Is this the newspaper article that was used in reference to --

JUDGE GRAHAM: This is the newspaper article that Cokely used.

THE CHAIRMAN: The one you cross-examined her on and had marked.

JUDGE GRAHAM: Yes.

THE CHAIRMAN: I thought that was put into evidence.

THE CLERK: I don't have a 219, sir.

JUDGE GRAHAM: 219 is the misquote that was put in.

THE CHAIRMAN: Well, Madame Clerk, hold the clock for a second on the judge. There was -- I thought that was put into evidence. I saw it in the judge's hand twice.

JUDGE GRAHAM: Okay. It was.

MR. BOSTIC: It was in evidence, and I have a copy he can have.

JUDGE GRAHAM: It's in evidence.

THE CHAIRMAN: All right. Start the clock.

JUDGE GRAHAM: Ms. Cokely testified from

this page of this newspaper article. That is in evidence, and her testimony is in evidence.

First look at her testimony. Mr. Bostic went up. He said, "Did Judge Graham say" such and such?

"Yes."

"Did Judge Graham say" such and such?

"Yes."

"Did Judge Graham say" such and such?

"Yes."

Judge Graham came up here. "Ms. Cokely, instead of yes or no, fill in the blanks. Judge Graham said, 'They also dislike me because' -- fill in the blank." Can't do it.

"He said, 'Most defense attorneys in this area don't like me. One reason is because' -- fill in the blank." She couldn't do it. She couldn't remember.

He asked her about acting goofy. If he said, "Did he say acting goofy?" she said, "Yes." If I said, "Attorneys acted blank," "I can't remember.

And then she admits that the Chronicle misquotes. And then -- I've proven to you three examples of misquoting. Sheriff Dean

said that he was misquoted, Ms. Cropper said that she was misquoted, and I showed you the paper two days ago where you know they misquoted me.

Now, the level of proof is clear and convincing evidence. Has he proved to you by clear and convincing evidence that these things were said? That's the level of proof, and you're trying to remove an elected public official.

But let's go a little -- let's just look at it. Okay? If you want to accept this as gospel from the Citrus County Chronicle, okay, go over it. Is there anywhere in this article or her testimony where I said they acted like little children? You won't find it. You will not find it. I did not say that, and Mr. Bostic has told you by clear and convincing evidence he proved it. You won't find anywhere

in her testimony of this article that I said they made faces at me. Nothing. No evidence whatsoever to that.

There's only one piece of evidence that he has proven. The only statement that he has proven I have made -- and I won't say proven;

- PAGE 28 -

offered evidence on -- is that I said attorneys had acted goofy in court. That's the only thing he even offered evidence on. And I would refer you to the transcript, page 329, and this exhibit.

Now, he also said that Judge Graham said, "You should put them in jail so they could learn to read law books." Now, you see, this is an exaggeration. It's not an exaggeration by exaggerating in itself. It's an exaggeration by taking it out of context. I'm sure when you folks first read these charges, you couldn't believe a judge would say, "If you don't stop acting goofy, I'm going to put you in jail and let you read law books." That sounds wacky, doesn't it?

What did he not share with you? He didn't share with you that that was the fifth alternative that I suggested. Ms. Cokely testified to this -- and I didn't impeach her on it because I didn't

want to impeach her on it. She said, "There are many fine" -- Judge Graham said to her, "There are many fine attorneys in Citrus County." That's how I prefaced it. He didn't say, "Judge Graham said

there were many fine attorneys, but some of them act goofy." He just told you the goofy part.

And then what else did Judge Graham say? "I'm going to start taking actions against attorneys who do not act right." That is injudicious? Unfit? He said he will "caution them the first time" -- caution them.

"Then, on a second offense," he will "take away their privilege to be called out of order on the docket." I do that for the attorneys. I call them first on the docket, this fellow who is so mean to the attorneys.

"Then, on a third case of misconduct," He would "hold them in contempt of court." You don't think that's right? A third time an attorney comes in and misbehaves, the judge shouldn't hold him in contempt after two prior warnings? That's injudicious?

I said, "The fourth time, I'll even put them on probation, give them some community service." And then I said, "And if an attorney comes in there five times and can't behave correctly, then I'll put him in jail, and maybe they can read some law books and learn how

to be an attorney."

That's the truth. That's right. There's nothing wrong with that, and judges should do it. Why? For the independence and integrity of the judiciary, the integrity of that courtroom.

Let's go to -- now, he says there's other evidence that I said these things. Clark Stillwell. Clark Stillwell took the stand and read to you a proclamation of the Citrus County Bar Association. Read it. Nowhere in there does it say that I said any of these things.

He said read my apology. All my apology says is that I criticized attorneys. It doesn't prove that I said any of these things. This is the only proof of what I said if you believe it. Clear and convincing to remove an elected public official.

Now, he says -- okay? He says, "That's the end of this discussion. You said it." No. That's not true. He's got to prove it's not true. This is freedom of speech, an elected public official talking to the press. He cannot deny me my right 'to say attorneys are acting goofy if they are. He's got to -- I

don't have to prove they're acting goofy. He's got to prove they aren't. He's got to prove that's not true.

The fact that they were acting goofy is unrebutted on the record. No one did he bring -- any witness in here to say attorneys were not acting goofy. Not a single word. Because this has been the way this case had been presented to you. Put a couple of pieces of paper there, walk away, "He said it, and I'll tell you it's unethical." No. He's got to prove they weren't acting goofy.

And think about Mr. Stillwell. All right? The fellow who was so offended -- okay? What did he do? He insulted an attorney by name. I didn't do that. In fact, the gravamen of their complaint was I didn't name attorneys. It would be improper to name the attorneys. That would be improper. This was a general criticism, not a specific one. His conduct was improper to say "A

new attorney is the only thing that's not as bad as a 16-year-old lovesick boy."

Now, let's measure the free-speech issue. Did you hear Justice Burger? What did

he say? Former Chief Justice of the United States Supreme Court. He has the right to free speech to say --

THE CHAIRMAN: Excuse me, Judge. Can we stop the activity here? We're interfering with the judge's closing argument.

JUDGE GRAHAM: She's not interfering with me. They're bringing me my demonstrative aides for later argument.

THE CHAIRMAN: Okay. That's not bothering you, Judge?

JUDGE GRAHAM: No.

THE CHAIRMAN: Okay. Go ahead. I'm sorry to interrupt, then, if it's not bothering you.

JUDGE GRAHAM: "The legal profession as a whole has a very poor standing. There are many causes for this. Some of them are the incompetence, misconduct, bad manners, and lack of training. I find no pleasure in saying to you that the majority of lawyers" -- what did I say? Many fine attorneys and a few who

are so poorly trained they are not properly performing their job and that their manners, professional performance, and ethics offend a great many

people, including Judge Graham right down there in little ol' Citrus County.

"Those who do not accept these harsh premises will not accept the proposals I intend to make. There is no single cause for the bad image of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the Bar pollute the stream."

You see, Justice Burger -- he tells you this impression, this concept of bad conduct -- it's a big stream that things pour into. Yet Mr. Bostic insists that I must step forward and name names and tell you when. I never thought for a moment that an elected public official could not make a statement like that; that he would have to have name, rank, and serial number of the offenders.

But after this offense I did, and after this offense I kept name, rank, and serial number. I kept the transcripts of these attorneys who would come without their clients, without their pleadings,

without their law; wouldn't come at all; would yell "bull" at each other in court; quarrel in court; chew gum like a cow;

- PAGE 34 -

a cow; come in at a sentencing hearing, when you're supposed to be representing a defendant at sentencing, and say, "Judge, before I ask you to be lenient with my client, I want you to know I'm going to run against you next time." Yeah. Slouching over --

MR. BOSTIC: Excuse me. I object.

JUDGE GRAHAM: Okay. I'm just -- you can argue what is or is not in the evidence.

MR. BOSTIC: None of that is in evidence.

JUDGE GRAHAM: It is not in the evidence.

THE CHAIRMAN: Excuse me, Judge. Knowing my ruling, the objection is overruled. The Commission will consider what came into evidence only.

JUDGE GRAHAM: I'm arguing what did not come into evidence, because the Commission would not let me put it into evidence. How's that for a Catch-22? How's that for a Catch-22? Burger says it's a stream. You agree it's a stream. So afterwards,

you keep the name, rank, and serial number, and then you're not allowed to prove it.

"From time to time in meetings with judges, I would ask the percentages. The

greatest percentage I ever got was 25 percent." All right? I won't go on and on, because I don't have the time. Compare that to the single comment that any evidence has been introduced into.

"Judge Graham said that the attorneys were acting goofy." I suggest if Justice Burger can say all this -- I know I'm not a chief justice of the Supreme Court; I'm just a little ol' county judge. I know that. But I am an elected public official, and I'm an American citizen, and I have a right to say something if it's true. And the way I said it was not injudicious, and it was true, and it was deserved.

Mr. Bostic says there's been no recognition, no contrition, no commitment. He's wrong. I was wrong to apologize for making that statement. I have admitted it. It was an ethical mistake to apologize to those attorneys, and it was dumb because of the

extreme pressure that was put on me by the administrative judge, Edwards, and this entire Bar.

After -- I was also suffering from that

accident -- if you'll look at that photograph -- I wasn't strong enough to stand up to them at the time, and I am sorry, and I will make you a contract. I will never back down from them again as long as they act like they act in the courts of law. And if they continue to act goofy, I will continue to say they're acting goofy until they stop acting goofy. And that is what the independence and integrity of the judiciary is all about.

Let's go on to 1-B. You read it. An article published in September 15th, 1988, St. Pete Times. Is that article in evidence? Did you ever see it? I can't find it. I searched all night. I don't remember it ever being put into evidence. I don't think it was ever shown to you. And Cokely testified about what was in the Chronicle. I don't think there is any evidence in the record of that.

But let's just say that I have -- I did -- if you're willing to accept the fact that there has been clear and convincing evidence on that when I can find none, okay; if I've missed it somewhere,

okay -- Commissioner, have I? Where? Okay? You've got to prove it's not

true. You've got to prove it's not true, and you've got to prove it by clear and convincing evidence.

"I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless basically because they are doctors and lawyers" -- and I forgot to say "influential people." Excuse me. You betcha it's true.

I've been in the system, and this is why I'm in trouble. If you're not a member of the club, the club doesn't care if you criticize it, because you're not a member; you don't know nothing, and nobody will listen to you. I'm a member of the club. I'm a judge. If a judge says it, the members of the club get real unhappy because he's a member of the club. People might believe him.

People don't believe this because of me. People believe this. If you ask 100 people on the street, 90 of them will say, "You're right. Attorneys and doctors and influential people get treated better in our courts of law. They believe that. I believe that. I believe it from my experience not only as a judge and an

attorney but as an individual. And you know what? The ten that don't believe it will be doctors, lawyers, and influential people.

What proof do I have of that? Trooper Worsham, Trooper Lucas. Now, folks, together they almost have a half century of law enforcement experience. They both got on the stand. They said -- "What have you observed in the courts of law?"

"I've seen DUIs reduced to reckless unfairly on numerous occasions." They said "numerous"; I said "routinely." Okay. Big whoop-de-doo. All right? On numerous occasions DUIs reduced to reckless unfairly.

And I said, "Did you make any observation about what type of people that this usually happened to?"

Both of them, "Doctors, lawyers, influential people, people with money."

Now, folks, you might not agree with it yourself. You might not think it's true personally. You might not think it's true from your experience, because I don't know what your experience has been. See, I've experienced it in Citrus County. In your circuits, it might

not be true. Okay? In this circuit, I offered you evidence it was true.

And what evidence is there that it wasn't true, clear and convincing, to remove an elected public official? It's 1-C. "You accused the Office of the State Attorney of routinely regulating DUI offenses of lawyers and doctors to reckless driving for no apparent reason." Okay. Yes, I said that. It's on the record. It's true. Again, same arguments.

"On February 20th, in open court, in State v. Pfiester, you accused State Attorney Brad King of favoritism while he was an Assistant State Attorney in his handling of State versus Ortolano." That's all he proved. Now, he's got to prove it's untrue. He's got to prove it's untrue.

Now, what's the evidence that he has that it wasn't true? Surprise. Brad King. One question. "Is that true?" Brad King, "No." That's his evidence that it's not true.

Now, what's the evidence you've got that it was true from Judge Graham? Go look at the appeal file of Katherine Clark. It's in the record, and we're going to go over it just a

- PAGE 40 -

little bit. It's in the record on 144 through 148.

Madame Clerk, do you have R-144 through 148? I found it.

First of all, the entire record is there to support the briefs, the underlying documents. Now, I'm going to read you the statement of the facts of the case in that brief. It is the law of the case, and it is the facts of the case. Why is it the facts of the case in the briefs -- because usually the facts of the case are in the trial court. It's because all of the facts of the case and the statements of the case were agreed to by the State. Nobody disagreed that these are the facts and history of the case. It's on the record.

I appealed this -- what happened in Denise Ortolano? Let me tell you what happened. You can tell from this. All right? Not me. This is what the record will tell you happened.

Spike Fitzpatrick -- is he here? Spike Fitzpatrick, the fellow who was jumping up and down with joy when that corrupt judge, Mr.

- PAGE 41 -

Damron, sitting right there, was removed -- was reelected -- the fellow you threw out of office. They're both here right now.

There was Spike Fitzpatrick, the guy who was whooping and hollering for Judge Damron to stay on the bench. I can understand why. What happened?

Spike Fitzpatrick came in before the judge, Damron. Right? And Mr. King is there, the guy who keeps, quote, faggot letters and political surveillance and calls attorneys "weenies." Brad King, the same one. Brad King, the guy that falsely accuses judges of crimes. All right?

That's the scenario. Fitzpatrick, King, and Damron. In comes Denise Ortolano. It's in the facts in the case. She's the daughter of Pat Ortolano. I proved that to you. And what was Pat Ortolano? A big shot in politics in Citrus County; recording secretary of the Inverness Democratic Club, a member of the Citrus County Democratic Executive Committee for 12 years, over a decade -- that's the top of the party, the Executive Committee -- chairman of the executive Committee for three years. Top dog in Citrus

County.

Now, after this affair -- yes. After this affair, because she was so prominent in politics in this county, she was elected the executive secretary for then State Senator Karen Thurman.

Now, Mr. Bostic and the newspapers say, "That doesn't matter. It happened afterwards." Of course it matters. It shows how important she is in the politics of Citrus County to be chosen even afterwards for that position. Then she became legislative assistant for Florida State Senator Thurman. And then, when Thurman was elected a United States representative, she becomes a constituent liaison. This is a person of very great importance in the politics of Citrus County.

And I'm sitting out there with two clients. All right? And this is in the facts of the case. Denise Ortolano and Katherine Clark -- excuse me, Katherine and Debbie Hamilton.

Now, what do I see happen? Kathy Clark was DUI. She was not involved in an accident. It was her second offense in three years.

Okay? You got the picture?

Debbie Hamilton was DUI. She was involved in an accident. She was driving without a license. It was her second offense for three years. A little bit worse.

Then the worst case, Denise Ortolano, Pat's daughter. She was DUI. She was involved in an accident resulting in $3,500 worth of property damage. She left the scene of the accident on top of everything else. She was driving without a valid license, on top of that, and it was her second offense within three years; and on top of that, she was still on probation for her first DUI. Okay?

Now, folks, Mr. Fitzpatrick, Mr. King, and Mr. Damron -- Judge Damron -- one-year revocation of her license, $500, ten days in jail. Okay?

What happens to Debbie Hamilton? She didn't do as bad as Denise. $500, 70 days in jail, license revoked for five years.

I'm sitting there in the courtroom. I can't believe this is going on. I've got Katherine Mansfield Clark sitting by me. She's

saying, "Attorney Graham, what's wrong with you? You told me my license would have to be taken away for five years. That lady is walking out of here with a one-year revocation."

So what did I do? A good attorney, I said, "Damron, hey, you did it for her. Do it for my client. Equal protection under the law." All of a sudden Brad King, the guy who says, "I was only there to just handle the pleas. I was just -- I exercised no discretion" -- that's what he said. All of a sudden, if you read the transcript, he bounces into action. All of a sudden he becomes an advocate for the State. He just, you know, discovers it.

"Oh, no. Not for your client. Huh-uh. Oh, she signed a waiver of prosecution. Ms. Ortolano didn't sign a waiver of prosecution." Ms. Ortolano did sign a waiver of prosecution. They hung their hat on -- the whole thing on this one-year revocation saying, "Oh, Denise had not signed a waiver of prosecution." They cited Baldassare and said, "Well, if you haven't got a prior conviction, you can't

enhance the penalty," blah, blah, blah, blah, blah.

It was all false. She had signed a waiver, and it's in the record. Okay? But Mr. King wouldn't overlook that. In fact, he jumps to his feet and goes, "Oh, they're always signed." It's in the transcript. Read it.

And the State -- and do you know what the State said in reply? I appealed it. I said, "In Citrus County, if we're going to have justice like that for Debbie Hamilton, we've got to have it for everyone." That's what American justice is all about: equal protection, fairness. You know? I appealed it. I brought all these things to the attention of the appellate courts.

Mr. Bostic says I don't try to work within the system. I try to work within the system. I tried to get them to correct this. The State said, "We admit it was an illegal sentence." That's what they said in their brief. "We know it was illegal." And you judges know that an illegal sentence can always be corrected. They never corrected it.

Do you know what the State has the gall

to say? They said, "Oh, DMV took care of it. They revoked her license for five years." But all the people involved knew that there was legislation going on that allowed people to get different hardship licenses based on the status of their revocations, whether they were one, five, or ten.

So now I ask you, now I ask you, clear and convincing evidence that that wasn't favoritism and politics? Can you in good conscience say that he has proved to you clear and convincing evidence that that wasn't politics going on? Do you really believe that?

Some of these people have said they were offended by me because of my personality. That's more offensive than anything -- what I just told you -- than anything I've done; to see that kind of rank politics being approved and sanctioned by the courts, and even the appellate courts refusing to do anything about it.

So I ran for office, and I was elected. And I told the people, "I'm going to put a stop to it," and I did. And then -- I'm jumping

ahead of myself -- well, let's go ahead. Okay? And then I see the State Attorney coming in and a fellow standing in front of court, and I have to tell him, "Is this your first, second, or third DUI?"

And he says, "It's my fourth, Judge." And he's under oath. "It's my fourth."

"Well, why are you in felony court? Why are you getting the favored treatment of a misdemeanor plea for a felony case? What's going on here?"

The State Attorney comes in, Mr. Ric Ridgway, second in command. He testified to that. "None of your business, Judge" is basically what he said. And he says, "It doesn't matter whether it's" -- excuse me. I'm sorry. He says, "It doesn't matter, even if it's true. The way you do it -- and you do it when they're not there to protect themselves."

Brad King evidently was up to something. He sent his chief assistant down here to handle this little misdemeanor case. He chose who would be there to speak that day. Ric Ridgway, "None of your business, Judge. That's within the discretion of the State Attorney's

Office." After this history of Ortolano and Fitzpatrick and Damron?

And don't forget, in the record, Damron dismissed the Ralph Rooks case, his reckless driving. That became a campaign issue.

Later on Ralph Rooks, County Commissioner, got his DUI reduced to reckless. More evidence to support Worsham and Lucas. Okay?

And so what does the judge do? Sphinx on the Nile. See nothing, hear nothing. "I don't know about politics. I don't know about favoritism in Citrus County Court. Fine. I don't know who this guy is. All I know is you admit it's a felony offense they're trying as a misdemeanor. And I don't care about the independence of the judiciary. I don't care about the integrity of the judiciary. I want to keep my job, and I don't want to cause trouble, so let's just forget it. Plea accepted." That would be easy.

You see, that's what you're going to have, a bunch of timid souls afraid of their own judicial shadows looking over their shoulders all the time. If they stand up for what's right, they're standing tall before the

JQC. He hasn't proved it isn't true, and I submit to you I have. If you look at this honestly and objectively and impartially, you'll know it. I said that -- I accused him of favoritism with Ortolano. I made him explain to me why. And you want to know something that's really ironic about that case? The case is on file. Go look

at it. I was worried about the impression of impartiality and correctness to the public. Guess what happened. I had to recuse myself from the case. Do you know what happened? About three days later I found out that the defendant was related to my bailiff, and I put that in the order. I said -- now, this shows why it's important to ask a few questions under these unusual circumstances. If I had accepted that plea, a felony to a misdemeanor, and it later had come out that that fellow was related to my bailiff, people like my opponents in this community could have accused me of favoritism in the court; not me, the court. And would they do it? Brad King did it to Mr. Brownlee. Right? Remember?

- PAGE 50 -

And you've got to believe Brad King. His only -- the only evidence to the contrary is his word. Faggot memos -- his words-- using the resources of his office to keep political espionage of this danger right here to him -- this danger right here, marking asterisks by her head -- and you charge me with using the resources of my office. Is the State Attorney supposed to be using the resources of his office to take photographs of a woman like this and putting

asterisks by her head and keeping track of what she's doing for Judge Graham? Is that the duties of the State Attorneys?

This fellow who told you he called me a scum-bag and a sleazeball in front of his office staff -- the JQC needs to come to his aid? Refuses to shake hands with people if he doesn't like their speeches. Throws money at elderly women if they complain about being ripped off and not protected. Comes to the county judge's office and threatens to have a war with him. What is this?

You know, I told you this was a bizarre county. Can you imagine -- you judges, can you imagine your shock if the State Attorney would

come to your office and say, "You know, you criticize some of my assistants for not having informations filed on time. You better shut up or I'm going to have a war with you." Wouldn't you be shocked? This is the fellow you're supposed to believe when he says -- one-line denial. "Nope. There was no politics or favoritism with Denise Ortolano. Never has been. Absolutely not." That's his case.

"On September 17th, in open court and during a hearing in State v. Webb, you publicly accused Captain Roberta Moffatt and Burkhalter with trading official acts for other beneficial actions by the defendants." Read the transcript. Wait a minute. I didn't accuse Moffatt and Burkhalter of this.

Folks, read the transcript. This is what it will show you. A defendant comes in. He swears to the judge, "I'm going to tell the truth." He gets up there, and his case is being disposed of. And the judge looks at the case, and it's a second DUI. And he sees the guy is -- he looks at the bond, and he sees that the bond is marked out, and it says "ROR per C-5." C-5 is Roberta Moffatt. And the

judge is saying -- the judge is thinking Denise Ortolano and all this stuff -- and all this stuff that goes on in this county that you've heard about. And he's saying, "Why did you get released on your recognizance? What's so special about you? What's happening here?"

I didn't accuse Moffatt and Burkhalter of misconduct. The defendant, under oath, stated it. He stated it. He said, "Burkhalter

is a friend of mine. We've been trading favors for years. I was in jail, and I called him up. I asked him to come down and grab me out, and he did." That's despicable.

That's the same Burkhalter that went down and intervened when his son got caught literally with his pants down, with beer all over the place, underaged drinking, and nothing happened. Yes, that was in the testimony. That was Yuelling. He -- Yuelling was there, stopped Burkhalter's son, pants down -- read the transcripts-- pants down. He and another boy in a car with their pants off and beer cans all over the place, and they're underage. That was the testimony of Yuelling.

And Burkhalter arrived on the scene.

- PAGE 53 -

Poof. Nothing happens. These people out here, their sons and daughters -- they'd be arrested. They'd be taken to HRS if they were under 17; they'd be taken to jail if over 18. Not Burkhalter. Untouchable. Burkhalter. Dean.

Same Burkhalter who went down -- when his daughter got stopped and given a speeding ticket by Cropper, calls up on the phone and threatens him; says, "You better drop the ticket." Same

Burkhalter. Cropper goes down to the police chief; says, you know, "This ain't right. What's going on?" Gets the clear impression from the discussion, "You don't have to do it, but it would be in your best interest." And under great protest, Cropper goes down and dismisses the ticket. And you know he's an honest guy and a good guy because he hated it. He couldn't stand it. And to be as fair as he could, he dismissed the other ticket. He thought to himself, "Well, if I've got to do it for Burkhalter's daughter, at least I'll do it for the other person I stopped."

So here we go. Clear and convincing evidence, sworn testimony. And, you know, it

was ironic. "Oh, he was cleared of all wrongdoing." By who? King. Does cleared of any wrongdoing bring any memories back? Probably not, because you Commissioners weren't on the same Commission as this fellow right here. Okay? You weren't on the Commission.

You don't remember this fellow right here. Okay? This is the fellow -- all right? Okay? This is the fellow who went over to jail and told the lady, "If you write a political letter in support

of me, I'll let you out of jail." Soliciting a bribe. Trading a public function for a personal act. I reported it to Gordon Oldham, the State Attorney. Cleared of all charges by the State Attorney, and then this Commission found him guilty of the very same thing. But now Mr. Bostic wants you to believe that because Brad King cleared Charlie Dean and Burkhalter of any wrongdoing that I'm wrong.

That investigation went backwards. If I was going to investigate wrongdoing, I'd be going around looking for circumstantial evidence and trying to build a case. And if I stumbled over the sworn testimony of somebody

who said it happened, I'd say -- the smoking gun. Right? They started with the smoking gun and then worked their backsides off proving that what he said under oath in court was untrue to clear Dean and then filed a complaint against me with the JQC. It's almost laughable.

And he says, "Oh, but Webb was charged, tried, and convicted, and he spent 80 days in jail for getting ROR'd." He didn't spend the 80 days in jail for getting ROR'd. He spent the

additional days in jail for his DUI. Why 80 and not 10? Because of an aggravating circumstance surrounding his offense; something that showed to me he needed more correction than your typical fellow that gets his DUI and takes his medicine, or goes to trial and gets acquitted, or goes to trial and gets found guilty.

I don't care. They can go to trial and get found guilty. I don't punish them for it. Anything that they've done proper -- there's no problem with that. But to go down there and get grabbed out, trivialize and abuse the justice system with favoritism and friendship

and politics -- this is the kind of guy that needs to get a bigger message, and it also serves as a deterrent to this insufferable conduct to try and stop it.

And you wonder why they want to get rid of me? They want to get rid of me because I don't play along to get along and I won't let the Burkhalters and the Webbs and the Deans of the world abuse this justice system.

The justice system -- the cornerstone of democracy is the true administration of justice. That's what we're talking about. These

people are whacking away at it. Dismiss this ticket. Dismiss this ticket. Let this guy off. Don't arrest him. He washes my wife's car." And "Oh, Webb is down there? Yank him out. Oh, he's a friend of Dean? Forget that $2,500 capias. Forget it. Take him back to work."

Did he put on any rebuttal evidence? He didn't bring Charlie Dean back on here to rebut any of that, all of this testimony you heard. And was he available? You betcha he was available, because he was quoted in the papers the next day. "Oh, the man was sick, so we

took him home." He must have been talking about a different case, because the testimony here was "took him back to work." The newspapers didn't follow up on that one. Not in this county.

Folks, Canon 1. All right? I was standing up for the integrity and the independence of the judiciary. I deserve praise for it, not formal charges.

State v. Riggs. I accused Ms. Friedrich of "deliberately falsifying a record." Look at it. Okay? It's not there. I did not say she deliberately falsified the record.

Now, think about this. Brad King hates me. He's waged a war against me. Friedrich told you she hates me. All these people came in and told you how she acted in court, slamming down books and throwing down pencils and huffing and puffing, complaining about having too much to drink the other day. This is the Friedrich we're talking about.

And the Riggs we're talking about -- just off a felony probation for dealing in stolen property. The newspapers write it, "Boy, Young

Man, is Sentenced to Ten Days." No. Felony probationer gets sentenced to ten days. Comes into court -- Mr. Bostic won't say it. He won't say it, but I'm supposed to tolerate it in court -- with naked female butts and "Hauling Ass" on his T-shirt.

Silent as a sphinx, Judge. Be silent as a sphinx. Be afraid of your own judicial shadow. Don't do a thing. Just look the other way. Let it walk out the door. There's no problems. That's the easy thing to do.

The hard thing to do is -- when you've got a State Attorney that's at war with you and a public defender that hates your guts,

the hard thing to do is to say, "No, it's not going to go on in the Citrus County Court that belongs to the people in this county." So I held him in contempt, and then look at all the crud that started to hatch.

Ms. Friedrich -- she didn't ask for a supersedeas bond. I told her as soon as she filed a notice of appeal, I'd let him out. Wouldn't do it. What did she do? This is her testimony. Went to Judge Thurman. He had no jurisdiction for habeas corpus. Local rule No.

- PAGE 59 -

1. Goes over there and gets -- and ex parte, goes to him and gets a habeas corpus proceeding.

The State doesn't know a thing about it. She testified to that. They didn't know anything about it. She gets the writ. It's not served. The writ is not served on the Sheriff. He never responds. She didn't get the writ. She didn't get a writ of habeas corpus. There was no service of the writ on the Sheriff. The Sheriff didn't respond. There was no process. There was no notice. There was no nothing.

She filed a petition; he gave her an order releasing him from jail. Talk about -- nothing I've done is as unethical as that. And he had no jurisdiction to do it, and Sheriff Dean popped him out of jail. Why? High-profile case, it made the newspapers, and King and Friedrich had a chance to humiliate the Citrus County Court now. They were going to show I was wrong. The newspapers wrote, oh, how terrible this was.

So what does she do? She goes down and gets a transcript, she files an appeal. I'm

checking on the case. I get a notice that it's about ready to be granted because the State Attorney isn't going to defend me. Boy, big surprise. Big surprise. He's at war with me. He's not going to defend me. He wants to see the court fall on its face. He writes me a letter, words to the effect, "Naked butts, 'Hauling Ass,' no problem."

So should I be silent as a sphinx, afraid of my own judicial shadow? Should I just look the other way and let it ride? I was busy. No. I filed for an amicus. I went down there, and I stood up for the independence and integrity of the judiciary, became

amicus in the case to protect the court. And I have the right to do it, because in a contempt proceeding the judge is a quasi prosecutor. And Judge McNeal let me do it.

And then what do I find out? I'm reading the transcript. There's words in this transcript that never came out of my mouth. Words like "You're in contempt. Now let's have a trial." I know that wasn't said.

So I call up Ms. Friedrich, and I say, "Ms. Friedrich, there's problems with the

- PAGE 61 -

transcript here. Would you come over and listen to the tape and see if we can't work out a -- you know, resolve the issues?" Nope. She doesn't doesn't want to try and correct the problem. She doesn't want to even look. She doesn't even want to listen to it.

Now, that's why I didn't say "deliberately." That's why I said "falsified." Okay? Because there was more than an error made. There was a deliberate attempt not to correct it.

And, folks, you know this fellow has said during the pleadings that I put false statements in my pleadings. I have begged him to tell me what those statements are, and I have told him, "Sir,

if you'll let me know what those false statements are, I will correct them. It's my duty." He won't tell me. Ms. Friedrich wouldn't come over and help me either. Friedrich -- excuse me. It might be a personal conflict.

Then -- but, you know, at the time I still had some faith in her. Even though I knew she didn't like me, I thought, "Well, maybe she's just being a vigorous advocate."

- PAGE 62 -

Okay? So I thought -- I filed a motion to correct the record, and I put in there all the reasons why you know that my record was correct and hers wasn't. There was lots of reasons.

First of all, I got the rule book, and I was reading directly from the rule, and her misstatement was included in the context of the rule. So you know that if you're reading verbatim, you know what was said, and you know that I didn't say as part of that "I find you guilty." Okay?

Second of all, she made no objection during the proceeding. This woman that hates me -- do you think if I had said, "Sir, you're guilty of contempt. Now let's have a trial" -- a woman that's willing to get up there and call me every name in the book--

you don't think she'd have been up on her feet saying, "Judge, you just found him guilty. Objection "? You don't think that? I put that in -- it's in the record. All right?

And do you know what? They make me out to always being -- trying to insult people. I put in that motion -- I said, "You know, sometimes vigorous advocacy causes honest

misunderstanding." I said that about her. And do you know when I stopped believing that -- and you can see it in the pleadings. All right? I stopped believing it when in her reply -- do you know what she said? "The judge is just trying to create a smoke screen." No intellectual response. "The judge is trying to create a smoke screen." She even admitted it. She says, "It may not be 98 percent -- it might not be 100 percent accurate, but it's difficult."

Hey, the words that Ms. -- the words that this report of a appeal judge used in her dissent constituted less than two percent. The two percent that were inaccurate were extremely important.

So it goes up on appeal, and I am affirmed. And you know what? I had to do a brief that thick. The newspapers ridiculed me for it. They wrote ridiculing editorials, "The judge" -- blah, blah

this, blah, blah that. "He put an encyclopedia in." Isn't that funny? And then I won, and Friedrich and King and the newspapers couldn't stand it, because I had successfully stood up for the independence and

integrity of the judiciary.

And then Charlie Horn, my last opponent -- he takes it up on appeal to the Fifth District Court of Appeal, and I win again, because it's right. You can't "Haul Ass" in county court.

And then what happens? A District Court of Appeal judge reads the wrong record and based on the language -- the false language -- says, "The judge was wrong." I didn't say anything. I didn't go out like Kelly and raise a ruckus. I kept my mouth shut, because I understood she had been misled, she was doing her job, and she wrote her dissent. That's fine.

But then nobody was doing anything to get Riggs back in jail. He was just wandering around. He didn't have -- why not? He didn't have a supersedeas bond, and King wasn't going to bother to get him back in jail. He didn't even want to defend him. Friedrich wasn't going to put him back in jail. So I had to take it

upon myself to make a motion to show cause why he should not be put back in jail. And after all this aggravation, after all of

this effort -- stupid effort; the whole thing was stupid. It is so clear to anyone an individual like that can't come into court with naked butts and "Hauling Ass" -- and all the aggravation and work that I took and keeping my mouth shut, except within the case -- and he comes in, "You're wrong. You shouldn't put me if jail, because this Fifth District Court of Appeal judge said you're wrong." And after all that extreme provocation, I said -- I took the -- I accepted the obligation again to defend the independence and integrity of the judiciary and said, "Sir, don't be proud of that. It's based upon a falsified record."

You're right. If it happens again, I'll say it again. It's true. You're right. No recognition, no remorse. He can use it against me on reclosing. It has to be done. The judges have got to stand up for our courts. Our courts are the last bastion of decency left in our society today.

The family is gone and going. The arts are going. Go to the movies. See what it's like. We're falling apart. The newspapers -- they have disgraced themselves. Woodward and

Burnstein are criticizing the journalism profession today. The journalists themselves are writing editorials about attack journalism and how horrible it is. The schools -- you have to have armed guards at the schools now. The only place we have any semblance of decency left anymore is our courts. And, folks, it's being attacked. It's being attacked. If a judge stands up for something like that, he gets attacked. It's time to draw the line --

THE CHAIRMAN: Excuse me, Judge.

JUDGE GRAHAM: Yes.

THE CHAIRMAN: One second. How is the Commission doing? It's been an hour and a half. Do you want to continue? Judge, do you want to break now, or do you want to continue?

JUDGE GRAHAM: I would like a break for a few moments.

THE CHAIRMAN: All right. We'll take a break for -- how long, Judge? Ten minutes?

JUDGE GRAHAM: 15 minutes would be nice.

THE CHAIRMAN: We'll take a 15-minute break.

(Recess from 11:32 a.m. to 11:55 a.m.)

THE CHAIRMAN: Judge, before you

- PAGE 67 -

continue, I want to make sure our record on appeal is correct. And when you started asking the clerk for the Citrus County Chronicle's article of September 15th, 1988 -- I as well as you and Mr. Bostic were under the belief that it had actually been put into evidence. It has not been put into evidence, but the Chair will -- General Counsel, is that correct?

MR. RHODES: It has not been put into evidence according to the clerk's records and mine.

THE CHAIRMAN: So why don't we -- you've referred to it. The Commission would put it in as an exhibit anyway. I want to do it officially though.

JUDGE GRAHAM: Okay.

This is the single-page document that was tendered to Ms. Cokely to refresh her recollection.

THE CHAIRMAN: Right. They know what it is. So that now will be officially offered into evidence as Judge Graham's Exhibit No. 46.

THE CLERK: 46. That's right, sir.

THE CHAIRMAN: Now, Judge, there's three items that we need to take care of. Floyd's

- PAGE 68 -

Department of Motor Vehicle record is just this document, and I think you intended to put the record with it.

JUDGE GRAHAM: I'd ask the clerk to secure his record. Maybe she hasn't had enough time.

THE CLERK: I informed you I couldn't, sir, and I gave one of your people the information that you had requested about the driving record number. And I gave to that one of your people yesterday.

JUDGE GRAHAM: Okay. Could you go down to the clerk's office and ask for the driving record of Mr. Floyd, please? If she wants three dollars, you give her three bucks. Okay?

THE CHAIRMAN: All right. But the record needs -- this document will still stay as is until you supplement it.

JUDGE GRAHAM: Okay.

THE CHAIRMAN: The other thing -- yesterday, Judge, you indicated that you were going to put into evidence Exhibits 204 and 207. I brought this to your attention this morning, that we had not seen those exhibits yet.

- PAGE 69 -

JUDGE GRAHAM: Those were two video-tapes. I'll get them to you before you leave.

THE CHAIRMAN: All right, Judge.

All right, Judge. You have one hour -- you have 61 minutes left for your closing argument. We'll go ahead and begin now.

JUDGE GRAHAM: Finally, with respect to Riggs and his comments about Kelly that the judges are supposed to try and work within the system.

Folks, I did it. I tried to work within the system. You heard the evidence. I had problems for years with these transcripts. For years. And I went to Judge Swigert, and I said, "We've got" -- the most important -- if the true administration of justice is the cornerstone of democracy, the most important thing is to know what happens in them. We've got to have -- we've got to have an

accurate record. Nothing else matters if you don't know what happened. "Nope. Not enough money" -- and then turned around and built that alabaster palace up there with African marble and chrome and glass and fancy sconces and leather and huge expanses of space unused. But to have an

accurate record -- "No. We can't have it."

And I fought all the way to the point of going and begging the Commission, and -- with the newspapers fighting me, Edwards fighting me, everybody fighting me -- and we finally got a reporter in county court. And if they had listened to me, we would not have had the Riggs-Friedrich problem whatsoever.

With respect to Webb -- I want up there, and I said, "Folks, it's illegal. You don't have the authority to do these bonding schedules." And when I say that, judges all over the state go, "Oh, we all do it. It can't be right. We all do it." You all do it, and it's wrong.

There is a case law found at 22 So.2d 748. It's State - X.L. Ross v. Cobb. Old, old case. It says the Florida Supreme Court makes these rules, and it says the local circuits can only make rules

of necessity, local rules of necessity. It can't be just something that's convenient or beneficial like trying to get people popped out of jail before first appearance to reduce jail overcrowding -- under-spacing. All right? That is a huge step

to put in the hands of Sheriff's deputies, the bonding decisions which should be made by an impartial judge with a full record.

Moffatt and Burkhalter said, "Well, we can't get their full record over there." Exactly. That's why they shouldn't be doing it.

When a guy comes in front of a judge -- I put him under oath, and I say, "Have you got a prior record?" If they don't want to answer, that's fine. They don't have to. But if you want to convince a judge that your bond should be reduced, you might want to. And I make certain -- I always -- I pull all the driving records, all the criminal records. I ask them about their background. I make sure that their bonding is a fair determination.

And if Swigert had listened to me and done away with that bond scheduling and required, like the Florida Supreme Court requires, a hearing before a judge within 24 hours, Webb would

never have been possible. They couldn't have accomplished it if they wanted to.

And what about Special Counsel's call to

your sympathies for Captain Moffatt? "Oh, Captain Moffatt, have you ever been involved in a public controversy before?"

"Oh, never."

"And did this hurt?"

"Oh, I was so offended and embarrassed and hurt and upset."

And I got on cross-examination. "Ma'am, wasn't there something about your husband and a food thing? Didn't this become a big controversy?"

"Nope. Haven't got any idea what you're talking about."

And you know how hard I tried to pull the truth out of her, and you know the standard jury instruction about credibility of witnesses, whether they are being evasive and vague. And then what did I prove to you? She got caught in a big stink a few years back. She was buying the food for the Sheriff, Sheriff Dean, the same guy that grabs all his friends out of trouble. She was doing

the food purchasing and sending all the food orders over to the company that employed her husband.

And it became a big stink, and as soon as

it was made a big stink, they stopped it. And the chief assistant over there said it was a big embarrassment. It was written up in the headlines as a big controversy. She's been caught with her hand in the cookie jar before.

MR. BOSTIC: I'm going to have to object, Mr. Chairman. He is going so far outside of what's in the evidence in this case.

THE CHAIRMAN: All right. You understand my ruling on that. The jury -- the panel -- will consider only evidence that's been presented. You may continue your argument.

JUDGE GRAHAM: Additional minute, Madame Clerk.

Okay. Now, look. Sure she was upset. Sure she was embarrassed. She was embarrassed because they knew it was wrong, and she was upset because in the past they could get away with it. And with Judge Graham standing up for the independence and integrity of the judiciary, they can't. And now they want it back the way it used to be.

And if you folks get rid of me, you're going to have someone who is going to act just like Damron did. And when Burkhalter and Dean

and Moffatt want to grab their friends out of jail, there won't be any problem with it getting done. It will go right back to the way it was when you folks all came down here ten years ago. That's what it will be. Do you have any doubt after hearing all of this evidence?

That takes us up to 2. Now, I've got to move along quickly. I wish I had just a little more time, but I'm going to do my best.

State v. Rouse. Two controlled buys, two controlled sales, and it says, "You did it in open court," okay, "without conferring with law enforcement." Baloney. Jim Tarquin is a law enforcement officer. He's one of the principal ones in the State of Florida. He told me about Rouse being a big-time drug dealer, knew through his experience what would happen; that that understanding was the recommendation.

He went along with it. I asked Rouse if it's okay. "Do you understand it?" To both questions -- "Okay?" "Do you understand

it?" -- he said, "Yes, I do." He agreed to it. I could read you all the case law that says that a condition of probation is valid unless you

object to it. He had validly waived his counsel, and he was a dope dealer.

We live in the most violent-prone state in the nation. Your chances of being the victim of a violent crime are one in twelve in the State of Florida. It's driven by drugs and the crime that's needed to support drugs.

You had the testimony that this had been the pattern and routine practice of the Citrus County Court, that until Rouse there was no complaints about it; that it was helpful; that there were -- it was helping to control the drug trade. And you had the testimony that I cleared the courts. If I didn't clear the courts, I had them come to the bench, and I sealed the records.

And Mr. Reiter, I would ask that you seal any of these records that involved these cases, and the clerk can indicate them. I think they're already indicated. Okay?

Now, under the circumstances, all those circumstances, I got one defendant who appeals the decision. He did his 20 days, then didn't want to follow through. He said it was done in open court, and therefore he wouldn't be good

at it.

The rules require that you go back and ask for a motion for mitigation -- not mitigation, for a modification of your probation. That could have been done. If Rouse's attorney had come back to me and said, "Judge" -- first of all, I don't know if they were at the bench of not. You see, there's no court reporter, so very often a bench conference -- everybody just walks up and does it. Okay? So when you read the transcript of Rouse, there's no indication on there whatsoever whether or not -- it was done privately at the bench or not.

And Horn, my last political opponent, made use of that ambiguity -- again, because we don't have a court reporter, which I tried to correct -- and he makes out like it's on the record; it's done in, quote, open court. Yes, it was done in open court. Has

he shown you by clear and convincing evidence that it wasn't done at the bench? That's his burden. He hasn't met it.

Why didn't he call Rouse in here? Why didn't he call Horn in here? He just wants to

throw a transcript at you and have you remove an elected public official based on the transcript.

And yes, I got overturned on appeal. But you know something? They were wrong. There is nothing wrong with that condition of probation. It does help rehabilitate the fellow. It gets his drug dealers out of the loop. He no longer has those two to buy from. And, folks, it's done throughout the state. These drug deals are as common as coconuts in this state.

And you know what? The Attorney General wouldn't take it on appeal from the Fifth District -- Fifth Circuit Appellate Division. Do you know why the Attorney General wouldn't take it up? He wanted to be sure that this bad law wasn't made statewide by taking it up there and possibly losing it. And it's still going on, folks. They're cutting drug deals throughout this state.

And this decision, on its merits and on the legal principle, would apply to felonies as well as misdemeanors. The decision said, "Substantial assistance to law enforcement has

nothing to do with the rehabilitation of the defendant, and therefore is, per se, illegal. That was the decision of our appellate division. Think about that. They didn't say it was in open court. They didn't say it was knowing. Nothing. That was the entire opinion. You can't do it. If that's the law, we've got an awful lot of illegal probationers -- probation sentences -- in this state right now. I would estimate thousands.

But why didn't they do it? Why didn't they just come back -- if I forgot and there was just a problem, why didn't the defendant come back and say, "Judge, look. You goofed up. I can't do it because you forgot to bring us to the bench or get the other people out of the room"? You know why they didn't do that? Because I'd have done it. I'd have said, "Okay. I'm sorry, Mr. Rouse. I would have liked to have imposed this on you, but I agree. I understand" -- and I would have reduced it.

MR. BOSTIC: Objection. He's testifying now as to what he would have done.

JUDGE GRAHAM: Strike that. Strike that. I don't have time to argue. Strike it. I

withdraw it.

Okay. Now, look. Why wasn't that done though? Because it was Horn. He wanted to go to the -- he wanted to get -- the last fellow that ran against me and lost in the election represented this guy on appeal. And then he got Rouse -- or he himself filed a complaint against me. They didn't want to solve this problem. They wanted me sanctioned. And it's bad law, and it's wrong. If every judge would do the same thing, we would really make a dent on crime, and we would maybe start to win the war on drugs. Think about it. Every defendant with dope has to turn in a buyer and a seller. If every judge would do that, you couldn't have a dope business.

And you know what? When I did this -- Mr. Cury talks about courage. You know, as I participated in these things, do you know what I worried about? And I think it's a reasonable worry.

I worried about the dope dealers. Because I'm telling you, if I was a dope dealer in Citrus County, I wouldn't want Judge Graham around, because that's a devastating policy to make your customers turn you in. And that

concerned me.

I mean, I didn't go like some judges and lie in my bedrooms with steel walls -- and they've done that here. I didn't do that. But, you know, it made me feel uncomfortable, and I worried about that. Never in my wildest dreams did I ever believe that the people that would attack me would be a constitutional institution. I thought it would be the dope dealers.

The same thing with Shirling; exact same argument.

State v. Stanage. "You suspended the driver's license of the defendant who was a passenger with an open container." Oh, my gosh. "When he questioned your fairness," asked if you would reconsider it -- and I kept upping it every time he reargued with me.

Now, wait a minute. Wait a minute. Read the whole transcript. Mr. Bostic left out a few minor details. Mr. Stanage

had a terrible criminal record. I was familiar with him. He was on probation for DUI. His license was suspended, so he got a friend to drive him around in his truck, drunk, with him drinking

stolen beer that he had robbed from his ex-wife after knocking out her windows. And together, both of them engaged in this activity, drove their truck through the wall of a house.

Do you get that picture from this charge when you read it? Is that what you think? Is that what you thought this was about when you read this charge?

The motor vehicle laws say that a driver may have his license suspended if the facts and circumstances of the offense warrant it. Now, look through the motor vehicle laws of the State of Florida. They use every kind of word in the world for people with driver's licenses. They call them drivers, they call them operators, they call them licensees. They've got a million different names for them. It's a morass of terminology trying to figure out what they're saying.

Many of the definitions in the laws related to licenses call anyone who has a driver's license a driver. It was my interpreta-

tion that he was a driver because he had a license and that under all of those aggravating circumstances, he deserved to have

his license suspended. Now, maybe you disagree with me. Okay? Fine. You disagree with me. But I think that's reasonable. I mean, it's -- I think it's rational enough to argue about it, and I think a great many people would agree with it, including some judges. Okay?

It didn't say an operator's license may be suspended. It if it had said operator's license, I would have known I couldn't do it. But it says "a driver."

So for this you want to impeach an elected public official, and he's convinced you with clear and convincing evidence?

State v. Floyd. Well, that's a doozy. Floyd. Extensive driving record. We're trying to get it now. Okay? Extensive driving record. Comes into court -- look what it says. Look at how he has misled you. "You suspended Mr. Floyd's driver's license for one year and prohibited him from obtaining a hardship license for running a stop sign." Oh, my gosh. That's so terrible. That's a nutty judge.

And that's the only proof he gave you, was the cold record. And he walks away and says, "I've convinced you with clear and

convincing evidence it happened." Yeah. He convinced you with clear and convincing evidence it happened.

Floyd's driving record. Okay? Speeding, defective equipment, speeding, speeding, unlawful speeding, speeding, unlawful speeding, speeding, speeding, failure to observe a stop sign -- okay. Now, this may be going beyond '91. Close to it, okay, so I'll stop, but he continued.

All of that, and then he comes into court -- I could have suspended his license for a year for that record and be upheld on appeal. He comes into court. I said, "Why did you run the stop sign?"

He says, "I was out buying drugs, Judge. I was buying drugs. I was in a drug neighborhood, and I purposely ran the stop sign because I didn't want the drug dealers to catch me."

That's a danger to a community; a guy with a record like that that will purposely go out buying drugs and purposely running stop

signs. He needs to get a message. He needs that license yanked. He needs it yanked for

two reasons: one, to stop that driving; and two, to realize that if you're going to -- now, it sounds absurd, but if you're going to buy drugs, don't do it in a car running stop signs.

In State v. Obremski, "You ordered the defendant to purchase a bicycle for transportation." Big whoop-de-do. Is that plain enough English? Big whoop-de-do. Did he show you any proof there's anything wrong with that?

The man was on DUI. There is a great irony in our DUI laws. You've got to take away the guy's license. You've got to fine him five hundred -- thousand -- dollars. He's got to go to a DUI school. He's got to do community service. How is he going to do all this stuff? He doesn't have any transportation. How many times probationers have come in and said, "Judge, I violated my probation. I didn't have a car. I didn't have any way to do it.

So I developed a pattern and practice of trying to look at the court files and require them to get a bicycle so they wouldn't have

an excuse not to complete their probation and to help them complete their probation.

- PAGE 85 -

And, folks, the law is: There's nothing wrong with a condition of probation if it's not objected to. If any of these people had objected to it to me, I would have listened to them. "Why don't you want to get a bicycle? Let's talk about it." Okay? "Well, what other arrangements can you make?" I've had that happen sometimes.

State v. Wilcox. "As a part of your sentence, you ordered that the defendant purchase two bicycles and cycle a kid to school."

Madame Clerk, will you get me the Wilcox transcript? We'll come back to Wilcox.

"On March 15th you summoned a supervisor from the Sheriff's Office to your courtroom. You asked Deputy Amann about security, and you told her you would hold her in contempt if she didn't comply with your instructions." You bet. You bet. And I'll do it tomorrow if it happens again.

You've heard about the violence that can happen in court. One woman, 5-7, 140 pounds, almost took out Jody Crump. She was going for his gun. She could have killed him. I saw it.

- PAGE 86 -

I know what it's like; these deputies know what it's like.

These deputies don't work for me when I'm in Citrus County Court. Those clerks don't work for me when I'm in Citrus County Court. These people work with me. These people work with me. Okay? That's my view of life. These people are working with me, not for me. I worry about them.

And you will read that transcript. This was not the first time this happened. In that empty courthouse over there, with no security on first arraignments, one deputy was coming in with three or four criminals on a Saturday and a Sunday. It is completely empty. Me, the deputy, and four or five criminals. And I had told them before, "Folks, you can't do this. Somebody is going to get hurt." Now, is this a kind of arrogant, rude, obnoxious person that's worried about this? What do you think I'm doing?

He compared me to the guy that held somebody in contempt because the janitor wouldn't help him carry his table for him. "You won't help me carry the table? You're in

contempt." Is that a proper analogy? I'm sitting here worrying about a man's life.

And then two weeks later, poof, back in court. I go, "Go get your supervisor." "Ma'am, what do you see?" One deputy, three criminals, in violation of the Sheriff's own written procedures. And you heard that from Crump. Okay? And I told her, "Ma'am, I don't have anybody else I can tell. I'm going to tell you. All right? Never again. I'm not going to take a chance on one of these individuals being jumped by a bunch of guys. They've got their weapons with them. They've got the key to the handcuffs. I leave that courtroom. I am not going to let Officer Alexander stand there with his weapon and the keys to their freedom in an empty room to get hurt or murdered."

If they do it tomorrow, I'll do it again. I'll be standing up for the independence and integrity of the judiciary.

In Segrest, "You found a guy" -- listen to this -- "for saying the word 'bull' during the testimony of the witness in his trial" -- saying. Misled you. The facts of the case

are determined by the order and the record, and the order and the record said he yelled "bull" at a witness during a full, formal jury trial.

And if you read all of that record, which I haven't been able to publish to you, you'll hear the statements of the State Attorney, and you'll hear what the case was all about. Going 60 miles an hour through Crystal River, sliding sideways, 40 miles around -- an hour through corners. They had to chase him down four miles. When he did pull off the road, he was going 40 miles an hour. His wife was sitting on somebody's lap drinking beer; beer cans all over the place; marijuana in the ashtray. He gets out of the car. He curses the officers at the stop. He curses them at jail. He threatens the State Attorney during depositions and then comes into court and during a full, formal jury trial goes "bull" at a sworn police officer to get the sympathy of the jury.

And it was upheld on appeal, but still I'm charged with it, because 60 days, in someone's opinion, is too long, including dicta from an appellate judge.

- PAGE 89 -

Folks, appellate judges -- we've got a couple of them. Dicta is wrong. Why is it wrong? Because when you talk about dicta, you don't know what you're talking about. You don't know. That judge that said he didn't deserve 60 days didn't know everything that I just shared with you. He didn't know what Mr. Segrest was like. He didn't know his demeanor. He didn't know his conduct. He didn't know his attitude.

And then there's Stephens, Harold Stephens. The opinion -- I was reversed on that. See, they get me coming and going. If I get upheld, I'm unethical; if I get reversed, I'm unethical.

The opinion stated I held him in contempt for having a discussion with the State Attorney who had reneged on her promise and for stating 'bull.' That is what the opinion said. And you go back and look at the transcript and the orders. That's not true.

The first thing I held him in contempt for was for -- you heard the testimony -- for arguing and taking away the State Attorney's attention when she was supposed to be

addressing the Court and delaying and obstructing and embarrassing the due administration of justice. That was his number one error. And for -- and then, for yelling "bull." And you heard her. She said, "Well, halfway between stating and yelling." But did you see her explanation? "Bull." Loud enough to be heard -- and one of the Commissioners asked this -- all the way from this table to the bench, which is the same distance. Everyone in the courtroom.

Is this the way attorneys act? Is this justice? Is this the cornerstone of democracy? Attorneys quibbling and quarreling and yelling "bull" and stomping out? Talk about favoritism and friendship and attorneys getting better treatment -- favoritism to attorneys is an institutional law in this jurisdiction.

Oh, my gosh. What are you saying, Judge? What do you mean by that? Just look at Segrest and compare Segrest to Stephens. It's the law. It's the law in Citrus County that if a rock

hauler yells "bull" in court, he's in contempt; but if an attorney yells "bull" in court, he's not.

- PAGE 91 -

What was I doing in both cases? I wasn't trying to be mean to people. I love this system of justice. I have sacrificed for it. Four elections, lost one, won three. Why three? Because I had a run-off I've worn out five pairs of shoes. I shook hands with thirty, forty thousand people.

MR. BOSTIC: Excuse me. He could have taken the stand and testified to this, but he chose not to.

JUDGE GRAHAM: Strike that. I don't have time to argue.

Okay. Folks, I wasn't trying to be arrogant to him or mean to him. Segrest shouldn't -- and why did Segrest get a jail term and Stephens get probation? Why?

MR. BOSTIC: Excuse me. He's going to testify again.

JUDGE GRAHAM: No, I'm not. You can get it from the record. Look at the record. Segrest had a record. I said so in the transcripts. Segrest had a record. He had a prior criminal record. Stephens had no prior criminal record.

I'm running out of time.

40 hours of community service for Oldag. "I'll suspend ten hours of your community service if you wash the State Attorney's car with the T-shirt." I'm sorry. The order does say "State Attorney." I have not been able to go listen to the transcript. It's possible that the clerk wrote that and I had said the Sheriff's Department. Usually community service is with the Sheriff's Department.

Now, he has shown you clear and convincing evidence of what? He's shown you clear and convincing evidence that a guy was allowed to get ten hours off his community service if he used his T-shirt. Has he shown to you it was wrong? Did he tell you what was on the T-shirt? Did he bring the guy in to say he was offended? You know, anything about the case other than that? That's clear and convincing evidence that it's wrong? Maybe it's unusual, but what was it -- what was on that T-shirt? Isn't it reasonable to infer from the evidence that's in evidence that there was something pretty horrible on that T-shirt?

And the 40 hours was the routine. He didn't have to do it. He said, "Sure. I

understand." And I bet you he never came back in a court of law with that T-shirt on again or one like it either.

State v. Douglas. I wouldn't let a guy have contact with the victims of his crime. And yes, I got reversed; and yes, they were wrong again. And I respectfully say that. Okay? We have a difference of opinion, myself and the appellate courts, on a few decisions. They are wrong. Are they the law? Yes. There's a difference between me saying they're not the law and that they're wrong. I have a right to disagree with them and to say they're wrong, and I believe it on some of these decisions. If I didn't believe it, I wouldn't have made the decisions at the trial level.

Even though I think they're wrong, will I repeat it again? No. It's the law. I will never put another guy on substantial assistance, and I will never separate a father from his children even if they are the victims of the crime of trespass of an occupied structure. So don't be offended by me saying they're wrong, but they are. You can keep a defendant from having contacts with the victims

of his crime. The case law is massive.

You heard the grandmother. You heard what happened. You can do it in order to prevent further criminal conduct. He committed this crime as a result of his visitation rights. He had picked them up, and as a result of returning them, got involved in all of these offenses -- about three of them. And these children saw all of this violence. They were under psychotherapy because of the violence in the past. They were cowering under tables.

I heard all this, and in my best discretion -- not to be arrogant or rude or overbearing -- I said, "I don't think you should have any contact with these children, not only for their safety but so that you have a cooling-down period and you don't violate your probation."

He has shown you clear and convincing evidence that that's wrong? So wrong that you should, in effect, impeach an elected public official? I don't think so.

Okay, folks. I'm running out of time.

Chip Harp -- he said he was embarrassed. Do you really believe anything embarrassed that

man? Did you see the way he acted? Do you think that me asking him to put this coat on embarrassed him when he would come in here and act the way he did? He was humiliated because the coat was too short? Don't you think maybe he exaggerated -- Mr. Bostic said, "Chip Harp could have said anything he wanted to." You betcha. He did. You don't think he exaggerated a little bit?

Do you remember when he was testifying? "Oh, Judge Graham thumped me in the chest." Right? And then he turned to you and said, "Well, maybe not that hard. Maybe he just touched me." Exaggeration.

Then he comes into court. Do you remember when I put the coat on him so you could see it? Demonstrative aid. "Do you see that?" Oh, he wanted to show you how short it was. Okay? Did he exaggerate? Look what he's doing. Watch. Watch me do the same thing. And this is tailored for me. Look at that. You don't think he exaggerated?

You don't think he's exaggerating when he says he was humiliated? Why? Because I wouldn't let him wear that leather jacket? I

had articles that weren't allowed into evidence that said jackets and slacks are not appropriate for attorneys. It said business suits are appropriate. I agree. But I will allow jackets and slacks, but not leather jackets. And I'm unethical for drawing the line at that?

Mean judge, tough judge. Tough judges say, "Go home. You can't be in court. Come back dressed like an attorney." I took the coat off my own back and gave it to him, and he turns that into some type of threat: "Wear it."

But, you know, I was standing up for the independence and integrity of the judiciary because -- he said he went into court -- other courts -- dressed like he was that day. That's a disgrace. The judges that allow him to come in and out of the courts like that -- just like Judge Burger said -- the judges that don't sanction him or require him to do better are wrong. That's what Burger was talking about; the trial judges not doing enough. That's why he acts and dresses like that. It's because he can get away with it in other courts.

- PAGE 97 -

But you know what? You're going to have a bunch of timid judges afraid of their own judicial shadows, because the easiest

thing in the world is to say, "Oh, that's Chip Harp. Let him come in and act and dress like that."

State v. Dobbs. "Do you know what the problem is? The problem is you." Prove it isn't true. Look at the whole transcript. This is what we're talking about. You see, this is another misleading thing. It's all taken out of context. The man -- the defendant came in. He was accused of, on graduation night, going out to our schools, our public facilities, taking spray paint, drawing giant penises on the wall, "Leave her with a shaved beaver." Okay?

And then, I also find out he's doing this -- he has turned an adult, but he's still on juvenile probation for burglary. So I give him 60 days, and his mother walks up. This isn't like this other case where a father asks the reason for the sentence. Huh-uh. That was not a fair analogy.

The mother walks up and says, "Judge, you can't do that" -- or words to that effect.

"Every student does this as a part of graduation."

She's part of the problem. I didn't say, "Ma'am, you are a disgusting, disgraceful, horrible, obnoxious, unfit mother." I said,

"Ma'am" -- in a quiet voice, "Ma'am, you're part of the problem." And he's so offended? I turned to -- and she's going "Oh, no. They all do it."

And I said, "Well, let's find out if they all do it. "I asked the members of the community. I said, "How many of you folks have graduated from high school?" They all raised their hands. I said, "Any of you who have drawn huge penises on the wall and horrible, vulgar statements, would you please stand?" Nobody stood up -- or it was the opposite way. I don't remember.

Maybe that's unusual, maybe you think it's eccentric, but it doesn't demean the courts. There's a lot of people that would watch that and say, "Hallelujah. Somebody is standing up for not only the dignity of the court but the dignity of our community.

"On various occasions you conducted

yourself in a manner which impugns"-- State v. Webb. We've already talked about it.

4-J. I can't improve on Mr. McDermott.

5. Ex parte communication with Barrett. And this goes back to, also, F. Look, folks. You have heard enough evidence to figure

out for yourself, through the circumstantial evidence and reasonable inference, what that was all about. High-profile murder case. Ric Ridgway going out to the newspapers saying out-of-court statements; clearly a violation of his code of ethics as an attorney, trying the case in the press; insulting attorneys saying, "Mr. Bonnett has sunk to the lowest of the low" -- or words to that effect -- "a new low."

Now, I could have just been a sphinx on the Nile like one of the cases say. I could just be -- "Forget it." But it was wrong. It was wrong for Mr. Bonnett, and I don't have any sympathy for Mr. Barrett, but it was wrong for Mr. Barrett.

And what do you have? I had a proceeding -- a status conference -- where the defendant was not there. A court reporter was there, and the defendant's attorney was there, and no one

objected. And all I did was set another conference and say I was going to close it.

Did I have a right to close it? You betcha. The courts have a right to seal their own records. Johnson v. State 336 So.2d 93. You have a right to seal your records. How come -- you have a

right to seal the proceedings. There's in-camera proceedings throughout the state every day. There's one going on right now somewhere in this state. Okay?

Trial Judges' Book, "News Reporting." "When after consideration has concluded that a pretrial hearing is to be held, exclusion of media representatives as well as the general public is essential." Okay? "Notwithstanding the power and duty of the trial judge to warrant publishing evidence and notwithstanding the willingness of reporters to withhold, not all reporters are willing to do so, and there is serious doubt whether a reporter's violation of agreement constitutes contempt. Moreover, the only correctives for violations are a change of venue or continuance." Okay?

"In other words, all that has been said

about closed hearings assumes that the defendant has either moved or has consented to the suggestion," and the defendant consented by his acquiescence when it was set. That is one of the first rules of law. Silence is agreement. Nothing is objectionable unless it was objected to.

Mr. Barrett was there. I told him it was going to be closed. He voiced no objection. If he had said one word that he didn't want it to happen, I would have said, "Fine." Why? Because under inferences, I was trying to make sure that he and his defendant were protected.

You have a right to close hearings for good purposes. Do you think it would have been right to criticize Brad King, this political enemy, in a high-profile case? And consistent with that, I took -- for only the second time in the entire history of "Your Citrus County Court," I made sure that the tape wasn't played when you wound up with an Assistant State Attorney saying, "Judge, what happened? You're off the cases? We have two felonies left in the lurch." You betcha.

And under all those circumstances -- I

had made the ruling against King. He had appealed me. The day that it was affirmed, I was taken off the bench. Look at this. It's in evidence. The order taking me off the bench has a misstatement in it. It says there's a judge available, but there wasn't. You know

a judge wasn't available, because the Assistant State Attorney was in my court saying, "What are we going to do?"

Bonnett suspected an ex parte communication. I suspected one. There was one. Edwards was talking to three different people with the defendant not being there. That's the only thing Judge Edwards and I agree on. That case will get reversed. It will get reversed not because I wanted to have a closed hearing to admonish the attorneys not to blab at the press. No way. It's going to get reversed because a judge who is making favorable rulings in his -- on behalf of the defendant was jerked off the case. And you better believe under all those circumstances they're going to convince somebody that that's what happened.

He said I wasn't qualified to handle a

murder case. Bruce Cury knows about me a lot more than Judge Edwards. He's across the block and doesn't know a thing about me except that he doesn't like me.

Finally, State v. Mullins. Folks, read the transcript. The defendant was there. Mr. Bostic makes light of that. Oh, I never

thought about the fact that it was just -- the attorney was not present. You bet. That's it in a nutshell.

Never bothered to really sit down and look at that charge, pick up Black's Law Dictionary, and find out what an ex parte communication is. It is not ex parte if you're talking to the defendant and his attorney is not present. It is not ex parte. The gravamen of ex parte is that one side talks to the judge and the other side doesn't know it's happening and doesn't know the communication, and then the judge can act on that information without the other side ever knowing about it. That's the gravamen of ex parte communications.

Now, it may have been error because his attorney wasn't there. It's not an error that rises to the magnitude even of a reversible

error. He could have asked for a motion for a rehearing. And it's certainly not unethical to make that mistake. If it was, you wouldn't have any judges on the bench -- every time a judge didn't have the attorney present.

And if you'll look at the record in that case -- I knew the attorney wasn't present, but I continued because -- if you'll read -- that fellow, Chip Harp, had failed to appear with his client, and I had to continue the case because Mr. Harp forgot to show up. And then, when I wanted to have -- after I considered this bond on this fellow, who had failed to appear and was a danger to the community -- I come back into court after considering it, and again, Mr. Harp has poofed out of court as fast as he can.

Abraham Lincoln used to have a riddle. If you call a tail a leg, how many legs does a dog have? What's the answer? Ms. Baarsma, did I tell you this one?

MS. BAARSMA: Yes. I said five.

JUDGE GRAHAM: You said five?

MS. BAARSMA: Yes.

JUDGE GRAHAM: Abraham would say you're

wrong. Do you know why? Calling a tail a leg don't make it a tail. Mr. Bostic can sit here and jump up and down until nightfall. Calling that an ex parte communication don't make it an ex parte communication.

Let's talk about something more esoteric. Judge Edwards. I asked him, "Didn't you accuse -- criticize me for having Jesus complex?" Wouldn't allow him to answer. If he did answer that -- do you know what? If he did accuse me of having a Jesus complex, I would feel honored. Okay? I would feel honored. I don't think there's anything wrong with having a Jesus complex. I think he's a pretty good guy to be a fan of. Some people think people with Jesus complexes are fanatics. I like to call them fans. Okay?

And I know all the people that hate me -- they'll be saying, "Oh, how can he even talk about Jesus?" Jesus -- he was the guy that brought peace to the earth and was full of love and kindness and all these things. And, you know, the people that say that -- they don't understand Jesus. They don't understand Jesus, the people that say that. They think about

Jesus as sort of -- some kind of hippie, a love child with long hair and sandals that went around causing love and happiness and peace here on earth.

That's not what Jesus said. Do you know what he said? He said, "Don't think I've come to bring peace on earth." That's what he said. He said, "I have come to bring not peace but a sword. I have come to set a man against his father, a daughter against her mother, a daughter-in-law against her mother-in-law, and one's enemies will be those of his own household."

You see, Jesus was a troublemaker. Everywhere he went there was controversy. There was divisiveness. Okay? And you know what else he told his fans? He told his fans this: "Behold, I am sending you like sheep in the midst of wolves." Do you know how many times that's been a comfort to me?

You don't think I'm in the midst of wolves, a sheep? Look at the things they've said about me. Look at the horrible language. Eccentric, weird, weird-minded, a bully, crazy as a bug-sprayed cockroach. Do you see any of

that language that I have ever used with any of these people? I've criticized people always with civilized language, and it's always been the truth, and I've said it because it was true, and I did it because it was right.

He says, "Beware of people, though, for they will hand you over to the courts and scourge you." You bet. Folks, that's what happens in the world when you stand up for what's right. That's what happens to people. It's been happening forever. If you stand up for what's right, you get knocked down, and your only points are your points in heaven. Think about that.

And who did he have his most trouble with? Why was he in trouble? Because he went against the established order. Who? Remember that old word, the "Pharisees"? The people who ran the show? They were so proud and huffy. And they wanted to keep running the show. And he came into town, and he said, "This show ain't right."

And this guy that some people try to make out to be some love child -- what did he do? He went into the temples. He took a whip. He

kicked over the tables, and he beat the moneychangers out of the temple. And what happened? The people delivered him to the courts. And what did they do? They crucified him.

And am I comparing myself to Jesus? No. The things I've stood up for are nothing compared to what he stood up for. The suffering that I have suffered is nothing compared to what he suffered. I'm not even comparing myself to other citizens in this county. There are prisoners of -- ex-prisoners of war, there are veterans, there are people from Vietnam, there are citizens that -- what I have stood up for is nothing compared to what they have stood up for. The suffering that I am suffering right now is nothing compared to their suffering.

So let's get something in context here. I've got 11 minutes.

Mr. McDermott and I must think along the same lines. He doesn't want you to think about all the good Judge Graham has done. Huh-uh. That don't count.

Look at these 26 charges. Okay? Let's see. Brad King, Charlie Dean, wouldn't let a

guy draw penises on a wall, wouldn't let Floyd run stop signs going away from drug dealers. Okay? Wouldn't let Burkhalter grab what's his name out of jail. There you go. There's Bostic's case. Humiliating. Humiliating. Remove him from office.

Four thousand cases a year. Four thousand cases a year. Twenty-four-thousand cases in all.

Now, let's put it in balance. Okay? This is 5,000 pennies?

MS. BAARSMA: Five hundred dollars' worth.

JUDGE GRAHAM: Five thousand pennies. This is one fifth of the cases I've handled in Citrus County Court. Now, what did you think? Eccentric? Weird? Unfit? Here you go. Do you want me to put the other pennies on there? Now, let's just put the bags up here.

Okay. Now, there's -- that's what you're talking about. Now, this is all the cases that are done in all those 200 video tapes of Judge Graham acting like Ms. Willis and Mr. Tarquin told you I acted; no problems; everybody happy; a joy to be in his court. All right?

- PAGE 110 -

Standing up to Dean, standing up to King, standing up to Judge Edwards, standing up to the Bar, standing up to the bad attorneys. Did I leave out Judge Thurman? Thurman. Folks, do you know what this one is for? You see the fellow right there, three rows back? Standing up to Leonard Damron.

And, folks, let me tell you what it's going to be like here in Citrus County. And I tell you this with a certainty, absolute certainty. You've got a choice. You keep a fellow that acts like me, or the next guy is going to be a fellow that acts like that.

And now I'm going to tell you what I told you months ago. When I was elected the County Court Judge for Citrus County, I accepted the stewardship of a court system which had -- in your words, was irreparably damaged by over a decade by our previous elected judge. I chose to believe everything you wrote except the conclusion that the system was irreparable. I then set my mind -- and, I will add, my heart -- to the task of reforming the Citrus County Court despite the overwhelming opposition of those who supported and endorsed that corrupt

judge and who, in many instances, participated in and were benefitted by his misconduct and who in one way or another are involved in or related to the complaints which are now filed against me, and you now know that to be true.

Through great sacrifice and hard work, I have succeeded in returning to the people of Citrus County a decent, honest, open

court, free of politics, favoritism and friendship. To accomplish this requires strict compliance with the positive ethical obligations of the office of the judge, Canon 1.

Specifically, I have had to protect the independence and integrity of the court by maintaining and enforcing high standards of conduct, by insisting on proceedings which promoted public confidence in our judiciary, and by maintaining order and decorum in the court and by taking disciplinary action against those who have engaged in unprofessional conduct.

Unfortunately I have learned that when you stand up for what is right in a local legal system which has been irreparably damaged by a prior corrupt judge -- that you often stand on

the toes of those who have either tolerated, benefitted from, or approved of his conduct. These individuals include both circuit judges for Citrus County, the State Attorney, and the County Sheriff.

The charges which have been filed against me have not been filed because I am unethical. They have been filed because I am

too ethical for this bizarre, small, rural county justice system to accept.

I know that I have been characterized by my political enemies as being bizarre, unethical, and erratic; however, when you hear both sides of the story, you will understand that I am an honest, sensible, straight-talking judge caught up in a bizarre, unethical, and erratic small county legal system bent on revenging the ouster of Leonard Damron and dedicated to the replacement of myself with someone who will once again run the county court to the satisfactions of the attorneys, the judges, the sheriffs, and the newspaper editors -- and, I will add, but not to the satisfaction of the people of Citrus County -- and I say this humbly -- who love me and admire

me and want me to be their judge.

The people of Citrus County, who for over eight years have watched firsthand this struggle -- these people know what this is all about. You've had eight days; they've had eight years -- understand this and have rewarded my efforts by overwhelmingly reelecting me.

The complaints which have been filed against me are filed by those who are disappointed in that democratic decision. The complaints have been unfounded. I deny any unethical conduct other than that apology, which I will never do again, and I request that you find me not guilty of any misconduct.

DOCUMENT 18

Excerpts from Judge Graham's Show Cause Response

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE,
CASE NO. 80,273
NO. 91-415
_____/

SHOW CAUSE RESPONSE

Comes now the respondent judge in the above styled cause (hereinafter the "Respondent") who makes his Show cause Response and shows cause to this Honorable Court why it should reject the Findings of Fact, conclusions of Law and Recommendation for Removal filed by the Florida Judicial Qualifications Commission (hereinafter the "Commission").

KEY TO THE PLEADINGS

Throughout this pleading the Respondent will refer to the record and supporting documentation by use of the following key:

(Ex, PY, LZ)	Appendix Exhibit X, Line Z T,
(T, PY, LZ)	Transcript of the proceedings before the commission at Page Y, Line Z
(RX, PY, LZ)	Record Exhibit X, at Page Y, Line Z

( ) Indicates that the Respondent believes that a reference to the appendix, transcript or record is possible but due to the time limitations imposed upon him does not have the time to search and identify it.

[ ] Citations to decisional authority the Respondent would ite but due to the time limitations imposed upon him does not have time to search and identify.

Use of the above stated key is necessary because unlike most procedures for review by the Florida Supreme Court a record on review is not compiled, marked, or filed as a part of Commission proceedings in the State of Florida.

PRELIMINARY STATEMENT

The Commission filed a Finding of Fact, Conclusions of Law and Recommendation of Removal, (hereinafter the "Findings"), on

April 21, 1992. It took 53 days from the time it reached its conclusions to research, draft and prepare its Findings.

( ) The Respondent has been commanded to respond within 20 days.

The Respondent, a twice elected public official, is characterized in that Finding as an arrogant, abusive bully who has disgraced the judicial system. The findings fail to mention that the Respondent prevailed on 24 other false and malicious allegations unsupportable by competent evidence or that the Commission came to its conclusions only upon proceedings which blatantly disregarded the United States Constitution, common human decency or even the appearance of a fair hearing.[1]

The conclusions of law and recommendation of removal made by the Commission are dependent on their findings of fact contained therein. The findings of fact are based on a hearing in which the

[1]Citizens watching the proceedings attempted to testify that they observed the Commissioners talking, giggling, reading newspapers and even sleeping during the hearings. The chairman would not allow their testimony. The Commission kept the Respondent before it 9 and 10 hours each day, on one day allowing him only a 20 minute lunch break and on another occasion continuing with the hearing in the absence of the Respondent while responded to a police emergency involving the burglary and vandalization of his automobile.

Commission systematically engaged in a massive obstruction of the truth finding process by preventing the Respondent from engaging in meaningful discovery, or presenting his evidence. The Commission has further obstructed the fact finding process by branding the Respondent's open attempts to obtain public assistance in the form of information as an unethical and implicitly criminal "private investigation".

Finally the Commission has attempted to further impede the fact finding process by preventing the Respondent access to even the most fundamental resources such as telephone access, Xerox machines, or the use of his secretary to prepare and type depositions, motions or pleadings. The Respondent's use of these resources is also condemned by the Commission as unethical and criminal.

During the hearings there were scores of reversible error committed by the Commission with respect to rulings of law, evidence and procedure.

The Commission also refused to allow the Respondent to prove the facts supporting his eleven affirmative defenses.

The point of this preliminary statement is to immediately bring to this Honorable Court's attention that the facts which the Commission has developed for this Honorable Court to rely upon are only those facts which the Commission chooses to allow and that it has chosen to conceal as much of the facts which support the Respondent as it possible can.

The prosecution of this case is proof that in the 25 years that the Commission has existed it has devolved from a watchdog institution carefully exercising its power into a Frankenstein tribunal capable of both great good and much evil.

The arrogance, gross neglect and lack of due process exhibited by the Commission in the prosecution of this case threatens the core values of our democratic society, the right of the citizens to choose their public officials, and the right of judges to speak freely and to stand up for the independence and integrity of the judicial system.

Issues of the magnitude raised by this case deserve careful, unhurried, and thorough examination of the facts and law. Unfortunately, Respondent was unable to persuade this Court to

allow him 53 days to respond, (the same time taken by the Commission to prepare its Findings).

However, the Respondent will do his best to show cause why the Findings should be rejected despite the lack of adequate time and deplorable state of the record caused by the Commission's intentional efforts to prevent the truth from being established.

Because of the time restraints imposed by this Honorable Court the Respondent is certain that he will be unable to complete this pleading on time. Thus Respondent will prepare these pleadings in the following order.

First, he will draft a full and complete Background statement so that the Court may analyze this case within its social, historical, legal, and political context.

Secondly, he will analyze each of the nineteen charges of alleged misconduct to show that they are not supported by clear and convincing evidence. Respondent predicts that he will not be able to complete this task.

Thirdly, he will show that the facts upon which the Commission relies are legally insufficient for the reason that they were

obtained in violation of the established rules of evidence created to insure

the reliable discovery of the truth. Respondent predicts that he will be unable to complete this task.

Fourthly, he will show that the facts upon which the Commission relies are legally insufficient for the reason that they were obtained in violation of the due process rights protected by the Constitution of the State of Florida and the United States of America which were created to insure the reliable discovery of the truth. Respondent predicts that he will be unable to complete this task.

BACKGROUND

The Respondent is a 45 year old County Court Judge residing in Citrus County, Florida. He is a Registered Professional Engineer, a Senior Member of the Institute of Electrical and Electronic Engineers and a Bachelor of Science in Electrical Engineering.

He worked at the Kennedy Space Center assisting in the launch of two manned space missions to the moon and thereafter

worked for the General Telephone Company of Florida engineering radio and carrier equipment projects and serving on the technical assistance staff.

He is a Master of Business Administration, a Juris Doctor, with Honors, and a Master of Laws, specializing in business and taxation. He has been an associate with a small business and tax law firm, an assistant public defender, and a private practitioner of law.

He has twice been elected the County Judge of Citrus County, Florida.

In addition to this background the Respondent, at various times in his life has worked as an electrician, truck driver, cook, tobacco picker, carpenter, laborer, baseball park attendant, janitor, dredge

hand and survey crewman. He has rubbed elbows with both astronauts and field hands. ( ).

The Respondent has made time to serve his community. He has volunteered extensive time to personal direct assistance to the clients of the Department of Health and Rehabilitative Services.

He has voluntarily represented numerous indigent mentally ill patients before the appellate courts, including appeals on their behalf to the United States Supreme Court. He has voluntarily represented blind veterans before the Veteran's Administration. He has been very active in community service since his election as County Judge. ( )

The Respondent is not a millionaire. He was not born with a silver spoon in his mouth. His father was a postman. His grandfather was a farmer.

He is a common man who has been uncommonly successful. He has refused to abandon his common values. He is trained as a lawyer, elected as a politician, but thinks and acts like an engineer.

Because of the person he is and the values he holds many lawyers, politicians and successful people hate him. For the same reasons most of the citizens of Citrus County love him and repeatedly elect him to be their judge.

He worries, however, not about the next election but about the next generation.

The Respondent moved to Citrus County in 1983 and opened a private law practice. He immediately realized that he had joined

a small rural Citrus County legal system which was bizarre, erratic, and unethical and which stood in stark contrast to his experience as a lawyer in Hillsborough and Orange Counties, Florida.

- PAGE 7 -

In 1984 by complaint to the Commission he initiated the removal of former judge Leonard Damron from the office of the Citrus County Court. The findings of the JQC and the decision of the Florida Supreme Court in regards to his removal are found at 487 So, 2d 1 (Ex 1). The Commission did not talk, giggle, read newspapers or fall asleep during Damron's hearings.

In its conclusion the Florida Supreme Court stated the following:

[2] We find the record contains substantial evidence supporting the Commission's factual findings that Judge Damron abused the authority of his office for personal political gain; improperly used the authority of his office to discourage defendants from exercising constitutional rights; considered ex parte communications in making a specific judicial decision; granted an ex parte request to set aside a DUI conviction without notice to the state; and misused his judicial authority in threatening litigants who complained about his conduct. In addition to these specific matters, the record also supports the Commission's findings that respondent routinely discouraged litigants from seeking legal representation and engaged in ex parte communications with parties, attorneys, and citizens concerning matters before his court for resolution. Equally important to the issue of removal is the Commission's finding that the judge's testimony was "inconsistent, inaccurate, and, in many instances, inherently improbably and knowingly

false," and that "respondent's demeanor in response to many inquiries was not only unconvincing but evasive; and he could not or would not explain or justify many of his actions."

We agree with the Commission's findings and recommended discipline. We hold that respondent's conduct demonstrates a present unfitness to hold office and we conclude that removal is the only sanction that will adequately protect the public and ensure the integrity of the judicial process. Accordingly, Judge Leonard A. Damron is hereby removed from the office of county court judge for Citrus County, Florida, effective on the date this opinion becomes final.

It is so ordered. (Ex 1, p 7)

In all, the JQC and the Florida Supreme Court found Damron guilty.

- PAGE 8 -

of nine charges of misconduct. Among them, and most pertinent to the instant inquiry, is charge six wherein he is charged with having dismissed a DUI conviction ex parte under the table for Horace "Bud" Allen. (Ex 1, p 6) Bud Allen was the nephew of Charles Allen the Citrus County Property Appraiser. ( )

Just prior to filing the JQC complaint against Damron, Respondent ran against him for the office of County Court Judge. (Ex 2) During that election the issue of politics, favoritism, and friendship was raised when it was disclosed that Damron had first

withheld adjudication and then dismissed a careless driving citation for Ralph Rooks, an old friend and onetime county commissioner. (Ex 2, p 2, Column 1, Last 2 paragraphs, and Ex 3) Mr. Rooks later had a DUI charge reduced to reckless driving. (Ex 3)

At the time of the 1984 election Respondent had a net worth of $289.00 (Ex 4) Damron was and thereafter remained one of the wealthiest elected officials in Citrus County. (Ex 5)

During the election Damron was supported and endorsed by the oldest local newspaper, the Citrus County Chronicle. (Ex 6) During Damron's term of office the Chronicle garnered over $100,000.00 in small claims collections and judgments. During that time it never lost a trial. Typical of the special treatment afforded the Chronicle is the case of Citrus Publishing, Inc. vs. Scroppo. In that case when both Plaintiff and Defendant failed to appear for trial a default was entered against the Defendant. (Ex 7)

Even after the election the Chronicle continued to exhibit its biased and irrational prejudice against Respondent for having challenged their friend Damron. So biased was this local newspaper that when Damron was removed from office they wrote an

editorial accusing the Respondent of being un-American and sniveling for having filed a complaint. (Ex 15, Column 3)

- PAGE 9 -

The prejudice of this newspaper became so overbearing that Respondent at one point filed a complaint against the local editor with the owners of the paper. (Ex 16) The sole effect of this complaint was to harden the resolve of the Chronicle against Respondent.

Another issue in the election was the sentence of a $350.00 fine imposed on Susan Phillips for the theft of a 50¢ copy of the St. Petersburg Times newspaper. (Ex 2, p 2, Column 1) The Times, which constantly criticizes Respondent for being too tough, saw nothing wrong with a $350.00 fine for stealing two of their newspapers until Respondent made an issue out of it during the election.

During the 1984 election Respondent's campaign manager wrote a letter to the Citrus County Bar Association requesting their support in Respondent's efforts to defeat Damron. (Ex 8A) The Bar met in response to the letter and not only refused to assist in the removal of Damron, but reportedly considered endorsing him.

The President of the Citrus county Bar Association was at that time Mr. Richard "Spike" Fitzpatrick. Spike Fitzpatrick is also counsel for the School Board, the bank, the Clerk's Office, and the Citrus County Sheriff's Department.

On the evening of the 1984 election Spike Fitzpatrick accompanied Damron at the election office and reportedly smiled and flinched as election results came in for and against Damron and cried, "That's it!" as the final results electing Damron came in. (Ex 8B, Column 1, Last Paragraph)

After the election Respondent filed a criminal complaint against Damron for soliciting a bribe in the Moody incident. (Ex 9) State Attorney Gordon Oldham, a 28 year incumbent, issued a report in which Damron was "cleared of any wrongdoing". (Ex 10)

This conclusion proved to be completely at odds with those of the subsequent investigation by the Commission and decision of the Florida Supreme Court in the same matter. (Ex 1)

Respondent expected this result because of the relationship which existed between Damron and Oldham. This relationship is

evident in Damron's bizarre handling of a dog complaint made by Oldham in 1982. (Ex 20)

As a result of Oldham's refusal to prosecute, Respondent volunteered to be Ray Gill's campaign manager and was highly active in his campaign, making speeches in his behalf and placing campaign signs up for him throughout the County. It was at this time that Respondent first publicly stated his intention to put an end to the "good old boy politics" in Citrus County. (Ex 11)

Brad King, the current State Attorney, was then an Assistant State Attorney under Gordon Oldham and was politically active in his campaign. At one political forum he became so angry at Respondent that he refused to shake hands at the end of the event.

Ray Gill defeated Gordon Oldham. However, despite King's opposition to him, he kept King employed as an Assistant after King pleaded with him to keep him employed for the sake of the new home and family he was planning. ( )

King then instructed Respondent that all communications with the Office of the State Attorney would have to be by correspondence and called Respondent a "scumbag" and "sleazeball" in front of the office staff of the State Attorney's Office. ( )

Respondent has to ask the newly elected State Attorney to instruct King to put his politics aside and treat the Respondent with the customary courtesy afforded to all other defense attorneys in Citrus County.

- PAGE 11 -

King then ran against Gill in the 1988 election for State Attorney. During that election King falsely accused Gill of a crime. (Ex 12 and Ex 131)

After a grand jury cleared Gill, he was then falsely accused of civil law and ethics violations. Gill was also cleared of those accusations. However, the damage was done and Gill was defeated. (Ex 131)

Shortly after King was elected, two problems arose in the Citrus County Court.

First, Brad King and Charles Horn interrupted the Court by standing in the aisle between the Courtroom benches talking and giggling. Respondent had to stop the proceedings to ask King and Horn to take their conversation to the hall. ( )

Secondly, the State Attorney's Office began to be lax in its duty to file informations by the time of arraignment. Respondent

refuses to accept pleas unless there is a charging document to plead to. Accordingly, individual defendants would become upset if their cases were continued for the State Attorney to do his job.

The problem became so bad that Respondent finally resorted to instructing the complaining defendants to call King with their complaints.

This infuriated King who came to the Respondent's office and threatened to "wage a war" if Respondent criticized him. ( ) Respondent told King that it was Respondent's duty to run a good Court and that King need not fear criticism unless it was deserved, but where deserved it would be forthcoming.

King has waged his promised "war" ever since.

However, informations, with minor exceptions, have been filed on time.

Subsequent to the 1984 County Court Judge's election, William Edwards, the Administrative Judge for Citrus County, attempted his political revenge against Respondent for having run against Edwards' friend, Leonard Damron. That revenge took the form of a threat to sentence Respondent's client, a 15 year old

honor student, to 60 days in jail for No Valid Driver License, her first offense of any kind whatsoever. (Ex 13)

After the newspapers published her plight, Edwards called a closed conference with then Assistant State Attorney Brad King. When Respondent appeared Edwards refused to proceed in the presence of Respondent's private court reporter and the conference was canceled.

Subsequently, Edwards recused himself from the case. (Ex 14) The girl's parents, frightened by Edwards' obvious political hostility, asked Respondent to return their fee and substitute other counsel, which was done. This example of politics in the Citrus County legal system not only cost the Respondent a legal fee but also sent the public the clear message," "Don't hire Gary Graham as your attorney."

Some six months later, before Damron was removed, Respondent appeared in County Court representing Deborah Hamilton, a DUI defendant. Just prior to the Hamilton proceedings, Spike Fitzpatrick appeared on behalf of another DUI defendant, Ms. Denise Ortolano. Denise Ortolano is the daughter of Pat Ortolano, an active leader in the local Democratic Party and an em-

ployee of State Senator Karen Thurman, wife of Circuit Court Judge John Thurman. ( ) The Assistant State Attorney representing the State was Brad King.

- PAGE 13 -

( ) The presiding Judge was Leonard Damron.

Denise Ortolano was, among other things, sentenced to only a one year license revocation for her second DUI within three years. King and Fitzpatrick negotiated that deal. Damron accepted it.

When Respondent asked for the same sentence for Deborah Hamilton, King opposed it and Damron refused.

This obvious display of politics and favoritism in the Citrus County Court be-became the basis for an appeal to the Appellate Division of the Circuit Court on behalf of another DUI defendant, Ms. Kathy Clark. (Ex 18)

The State in its answer admitted that the Ortolano sentence was illegal. (Ex 18, p 3 and 4)

The State defended this incident by arguing that the Department of Motor Vehicles cured the error. (Ex 18, p 3) King has on numerous occasions defended his complicity with the same excuse.

However, this excuse begs the question, if granting a one year revocation instead of five had no benefit to Ortolano, then why was it negotiated for Ortolano, why did Damron and King oppose it for Hamilton, and why was it denied to Clark?

The answer lies in the pending legislation at the time and the hopes of Ortolano that somehow with only a one year Court revocation that she would be able to obtain a hardship license sooner than she would on a five year Court revocation. (Ex 19, p2)

Before the Clark appeal was decided Damron was removed and Larry Haag was appointed to fill his vacancy. Upon Damron's removal, Haag's only response was to express his fond likings for Damron as a person and his regret that Damron was not better educated. (Ex 21) Haag,

who had been the County Attorney for twelve years in a small rural County, was ostensibly unaware that Damron had "willfully and persistently refused to perform his duties," that he had "routinely discouraged litigants from seeking legal representation," and that he

had "irreparably damaged" the Citrus County Court with "malafides and scienter". (Ex 1, 487 So.2d, at Pages 2,4,5,6)

During the 1986 campaign during a political forum on October 29, 1986, the Respondent again raised the issue of politics, favoritism, and friendship in particular with regard to Haag's involvement in a 1982 junket to New York involving himself and all five County Commissioners. (Ex 22)

Again the Chronicle supported and endorsed Respondent's opponent. (Ex 23) Haag also had the support and endorsement of Damron. However, this time Respondent won the election. (Ex 24)

Edwards, who had participated in Haag's investiture, did not offer his assistance in Respondent's investiture nor did the local Bar.

Haag publicly promised after the election to do everything possible to help in a smooth transition to the new Judge. This help consisted of handing the new Judge the keys to the office and the Standard Jury Instructions for Civil Cases and saying "good luck".

The County Commissioners, breaking their own rules for the hiring of a replacement County Attorney, delayed the hiring a new County Attorney until after the election and rehired Haag. (Ex 25)

Subsequent to Respondent's election the Chronicle wrote several favorable comments about him including praise for Respondent's mail-in fine program. This lasted until the Chronicle, one of the most

frequent users of small claims court, lost its first trial in over a decade. The Chronicle then stopped filing claims altogether and returned to criticizing Respondent including editorials regarding the color of his Courtroom walls! (Ex 26)

Several weeks after Respondent assumed office, he met with William Edwards, the Administrative Circuit Judge, and the Citrus County Bar Association. The purpose of the meeting was to answer questions regarding Circuit Court and regarding the policies of the new Judge in County Court. At the end of Edwards' questioning, Respondent opened the meeting to questions regarding County Court. The attorneys refused to ask a single question of the new Judge.

Thereafter, friction arose between the Respondent and the local Bar. The friction evolved mainly from the fact that Respondent would not hold pretrial conferences in closed chambers, would not rubber stamp plea negotiations, and would not tolerate unprofessional dress or conduct from the attorneys.

Several attorneys began proffering plea negotiations to the Court and then filing motions to disqualify based on the fact that the Judge had discussed the case, among these was Spike Fitzpatrick. They were also engaging in rude and unprofessional conduct including jumping up and down to obtain the Court's attention, bickering with each other in Court, and turning their back to the bench and walking away without leave of the Court.

In hopes of sending a private message to the local Bar, at a sidebar, Respondent advised Paul Hawkes, an attorney, to explain to the Bar that he would no longer accept pleas from attorneys if they were going to criticize him for discussing pleas to insure their fairness.

Instead, Hawkes published to the press Respondent's remarks,

inviting an unnecessary public confrontation between Respondent and the Citrus County Bar Association. (Ex 27 and Ex 28)

Hawkes was a fellow Assistant State Attorney with both Brad King and Charles Horn. Charles Horn was one of the most rude and unprofessional lawyers practicing in the Citrus County Court and was one of the attorneys Respondent was complaining about. Horn was also Hawkes' law partner and later went on to oppose Respondent in the 1990 election for County Court Judge. Unknown to the Respondent at that time, it was proven during the hearings, that Hawkes and Horn had conspired to intentionally cause trouble in the Citrus County Court. ( )

On September 19, 1988, at the request of William Edwards, Respondent met with Edwards and the Citrus County Bar Association to discuss the confrontation.

The matters which Respondent discussed are best summarized by his presentation notes. (Ex 29) At that time Respondent reminded the Bar that he had twice invited them to discuss Court issues without a response. At the end of his presentation Respondent proposed an itemized schedule for meeting with the Bar to discuss specific topics. (EX, p 2,3) These meetings never happened

because Curtis Neal, the Bar President, would not cooperate with Respondent in arranging them.

Curtis Neal is a law associate of Spike Fitzpatrick and later went on to oppose Respondent in the 1990 election for County Court Judge.

Prior to the meeting Edwards threatened Respondent that he would use his administrative authority to remove Respondent from all County Court criminal cases unless Respondent worked out a "solution" with the Bar. ( ) Respondent advised Edwards that he did not have that authority and that Respondent would seek protection from

the Florida Supreme Court, if needed.

At the meeting Edwards, who had testified on behalf of Leonard Damron during his Commission hearing (Ex 30), again defended Damron and criticized his removal from office.

During that meeting, which was attend

ed by almost every attorney practicing law in Citrus County, Respondent asked if any attorney had ever had a plea negotiation rejected during the past 12 years. Not a single attorney responded!

Faced with the prospect of fighting the entire Citrus County Bar Association and having to file a lawsuit in the Florida Supreme Court against the Administrative Circuit Judge while still suffering from the aftereffects of an almost fatal traffic accident (Ex 31), Respondent issued an apology retracting his statements from the public forum. (Ex 32)

Respondent considers this to be the only ethical mistake he has ever committed as a Judge. ( )

Simultaneous to the above-stated dispute, Respondent was also embroiled in several controversies involving unusual sentences. Respondent has engaged in unusual creative sentences designed to let the punishment fit the crime because he personally believes and knows from shaking 10,000 hands during his campaign, that the people of the State of Florida believe that justice, as usual, has failed them. That belief is further substantiated by Florida's number one ranking in the country for crime where the average citizen's change of being victim of violent crime each year is 1 in 12. (Ex 33)

The type of unusual sentence which offended the press, but not the people include jail terms for cursing or coming to Court

drunk, killing poisonous snakes, destroying dangerous trucks, requiring

offenders to guard public areas they have desecrated, and forcing defendants to plug their firearms with lead.

The view of the press, the Respondent, and the public with respect to these sentences is fully revealed in the newspaper editorials and the responses related to them. (Ex 34,35,36,37)

These sentences continues to be a controversy right through the election of 1990. (Ex 38,39) During that election in response to criticism from both the press and his opponents, Respondent published advertisements to tell the other side of the story usually omitted from new reports. The whole story is explained in these ads. (Ex 40,41,42A)

Another controversy during the 1990 election was the campaign tactics of Respondent's opponent, Charles Horn. Horn ran a "Cut the Bull" campaign replete with billboards, bumper stickers, -and board games adorned with red snorting bulls.

Initially Respondent contacted the Commission for relief from Horn's tactics. However, after some reflection Respondent decided it was better to let Horn hang himself with his own rope.

Subsequently, Bill Swigert, Chief Judge for the Fifth Judicial Circuit, contacted Respondent regarding Horn's conduct. Respondent advised Swigert that he had no intention of pursuing a Florida Bar complaint. However, Swigert requested and was sent copies of Horn's material. At that time he stated that he was not going to use it to file a complaint but merely wanted to see it.

Later it turned out that someone filed a "secret" Bar complaint against Horn. This became a political liability for Respondent because everyone assumed that Respondent filed the complaint. (Ex 42B)

Later Respondent discovered that the complaint had been filed by the Chief Justice of the Florida Supreme Court, the Honorable Raymond Ehrlich. (Ex 43) When Respondent contacted Swigert and asked if he had penned the letter to Justice Ehrlich, he denied any involvement.

The importance of this controversy is twofold. First, as a result of the secret complaint, Canon 7(B)(1)(c) was permanently enjoined by the United States District Court for the Northern District of Florida. (Ex 44) Secondly, it suggests a close relationship between Swigert and **secret ethical complaints** originating directly from the Florida Supreme Court and involving as the basis of the complaint **local newspaper articles.**

Following the examples of his former office buddies, King and Hawkes, Horn falsely accused Respondent of a crime just weeks prior to the 1990 election. The substance of the "crime" was the distribution by his supporters of campaign postcards wherein the supporters included a written statement of their reasons for support. (Ex 45,46)

King in a carefully orchestrated exchange of FAX letters dropped the nuclear bomb in his "war" against Respondent by charging him, trying him, convicting him, and sentencing him in the press just eight days prior to the election. In a nutshell, King stated that Respondent had violated the law but didn't "intend" to. Horn replied that he would give the Judge a break because he

obviously just didn't understand his ethical and legal obligations. (Ex 47,48,49)

This false allegation of a crime for engaging in something as fundamental to our democratic process as supporters distributing campaign literature and explaining their reasons why is currently

the subject matter of a Federal lawsuit filed by the ACLU on behalf of Respondent. (Ex 50) This lawsuit has been shrilly condemned by the local press. (Ex 51)

The Honorable John Moore, Chief United States District Judge of the Middle District of Florida, in an Order dated October 6, 1992, found that the Respondent Judge's conduct did not violate the law and he was

"free to engage in his proposed conduct without fear of prosecution". (Ex 140)

In addition to having his friend King brand Respondent as a stupid criminal, Horn also received the support and endorsement of Damron, (Ex 52) the support and endorsement of the local newspapers (Ex 53,54,55) and the support and endorsement of Curtis Neal, ex-President of the Citrus Bar Association. (Ex 56)

Parenthetically, it should be noted that Neal's reason for dropping out of the race was more likely the fact that he feared disclosure that he was almost $300,000 in net negative worth. (Ex 57)

Despite six years of hostile newspaper coverage, hateful and distorted editorials, ridicule and insult, despite the assistance of King in branding Respondent a criminal, despite the endorsement of Damron, Neal and all the newspapers, Horn was overwhelmingly defeated by the Respondent. (Ex 58,59)

Respondent's victory was an especially bitter pill for the newspapers to swallow. Respondent had squarely framed this election as Graham versus the newspapers. (Ex 60, column 2) The newspapers acknowledged the battle. (Ex 61) Yet the newspapers who are used to bullying their way around the body politic of America lost and lost big. This point is especially important to Respondent's due process objections. His opponents have used the continuing adverse news reports and editorials of the newspapers to apply political

pressure on the Commission, an example being a letter from King to the Commission dated July 11, 1991, in which he attaches three

newspaper editorials calling for a Commission investigation of the Respondent. (Ex 132)

His opponents having failed to defeat Respondent, the two Circuit Judges and the County Sheriff then set their hands to the fray. Shortly after the election, Edwards informed Respondent in a private conversation that he was sorry Respondent had won and that did not think he should be a judge.

Edwards then appeared at a meeting between Respondent and the Citrus County Bar. The purpose of the meeting was to heal battle wounds and, at last, after four years of abstinence to have the Bar ask questions regarding the Respondent's sentencing practices.

The meeting which was attended by the local press went very well until Edwards voiced his opinion that the Respondent's sentencing philosophies violated the Defendants' due process rights. In particular Edwards was offended by the Respondent's practice of being more lenient to those who said they had done wrong, apologized for it, and promised not to do wrong again.

Shortly thereafter Edwards informed Respondent that he intended to transfer **all** County and Circuit criminal court proceedings to a million dollar Court facility being built as part of the new

jail in Lecanto, Florida. Respondent who was by law a member of the county jail planning committee was shocked.

Such grandiose plans had never been mentioned and Respondent knew that neither the Committee nor the public were aware of the construction plans which had been jointly drafted by Edwards and Sheriff Charles Dean. Presumably this was to be the Dean-Edwards Memorial Criminal Justice Complex.

Respondent disclosed these plans to the jail committee. (Ex

62) Edwards appeared the next day before the County Commission and "apologized" for Respondent's disclosure of the Dean-Edwards secret plans. (Ex 63) The implication that Respondent had done something unethical was clear.

Indeed, the Respondent received telephone calls from the local press asking questions about rumored Commission complaints. (Ex 64) and requests from Edwards himself for tape recordings of the jail committee meeting.

Undaunted, Respondent appeared before the Commission, apologized for Edwards' wrongful remarks, and reminded them that Edwards had never apologized for Leonard Damron. (Ex 65)

As a result of Respondent's disclosures and appearance the County Commission canceled the Dean-Edwards facility.

The Respondent is especially concerned that such fundamentally ethical conduct as he displayed in this situation, standing up to his Administrative Judge, disclosing a clandestine plan to build a million dollar facility, and protecting the integrity of the Citrus county Court was included in this Commission's Notice of Investigation! (Ex 66, Item 1i)

Respondent notes that this charge was dismissed. Respondent wonders if this Commission is going to file charges against Judge Edwards for his conduct in this

sordid affair.

Edwards also butted heads with Respondent over excusing jurors. On one occasion Edwards called Respondent and asked him to excuse a certain individual who had been summoned. When Respondent asked the reason for excusing the juror, Edwards responded that he was just a friend of his who didn't want to serve. Respondent refused to excuse the juror. On yet another occasion Edwards' judicial assistant called and asked Respondent to excuse her son from jury duty. Again Respondent refused. (Ex 133)

Some five months prior to the Dean-Edwards Criminal Justice Complex dispute Respondent was also involved in a dispute with the other Circuit Court Judge for Citrus county, John Thurman.

Thurman was hearing petitions for writ of habeas corpus ex parte and without jurisdiction and illegally releasing defendants at the request of Attorneys Johnnye Friedrich and Jimmy Brown.

Respondent was also receiving numerous complaints from the public regarding Thurman's practice of coming to Court in plaid shirts, unshaven, with no tie and no robe, falling asleep during proceedings, and, when he was awake, saying "chicken shit" in Court, (with apologies to the Commission for the language).

Accordingly, Respondent filed a complaint with Chief Judge William Swigert. (EX 67)

Just prior to filing this complaint Respondent was approached at the Post Office by an employee of the Department of HRS. She **initiated** and engaged him in a conversation concerning her distress at the way Thurman dressed and acted in front of the juveniles in Juvenile Court. She expressed her opinion that Respondent had looked and acted like a Judge when he was doing the juvenile

docket and that Thurman's appearance and demeanor had a negative impact on the children in Court.

Respondent explained that he was considering doing something about the problem and asked her if she wanted her name used or if she wanted to remain anonymous. She replied that she would check with her boss and get back with the Respondent.

Later she told Respondent that she had been instructed that whether or not she got involved was her business but that it might cause problems for the Department and that she felt it was better not to get involved.

- PAGE 24 -

Before filing a complaint against Thurman, Respondent talked to Swigert about the Thurman problems and discussed with him Respondent's options. It was Respondent's belief that after all the controversy surrounding Damron's removal that the Citrus County Court system did not need another Commission proceeding. Hopefully, the Thurman problems could be solved with a meeting among the Judges.

At that time Respondent very specifically asked that Swigert not get involved in changing any of Thurman's orders regarding

State v. Mitchell or taking **any** action toward the Mitchell case in particular because any communication to Thurman designed to change his orders or any judicial action taken on that particular case would involve improper ex parte communications.

Despite my caution "somehow" Thurman signed an order vacating his previous orders and referred the case to the Appellate Division. (Ex65, sub-Ex 13)

Furthermore, at Respondent's meeting with Swigert, Swigert advised Respondent that legal counsel for HRS had contacted him regarding a complaint that Respondent had been wrongfully **approaching** HRS employees trying to **pressure** them into complaining about Thurman! Swigert implied that this would be an ethical violation and cautioned me to be careful. This is another example of how the Florida Code of Judicial Conduct can be used **against** Judges who attempt to stand up for the integrity of the Courts.

At that time Respondent shared his fear with Swigert that if he did not file a Commission complaint and attempted instead to resolve Thurman's problems by a complaint to Swigert that Thurman would seek revenge against Respondent either through the

filing of Commission complaints against Respondent or through other administrative methods.

Notwithstanding his fears and notwithstanding the veiled threats

related to the HRS employee, Respondent filed his complaint.

In response, Swigert scheduled a meeting in Citrus County among Judges Thurman, Edwards, Graham, and himself. Thurman forgot the meeting and went to his home in Marion County. Swigert called Thurman and the meeting was postponed until Thurman could drive back to Inverness.

At the end of the meeting Thurman's only real response was to accuse Respondent of recusing himself from too many cases. Subsequently, Edwards and Thurman attempted to frighten Respondent from his ethical obligation to recuse himself by assigning him a series of highly contested Circuit civil cases. (Ex 68,69)

Respondent was then involved in yet another conflict involving Edwards, Thurman, Swigert, and Dean. Thurman, who

was ill, needed a Judge to stand in for him. Respondent volunteered.

Respondent hear a Motion on behalf of a murder suspect to order the deposition of a State Attorney. The State Attorney had responded with inflammatory remarks attacking the integrity of the Assistant Public Defender. (Ex 70)

The Motion was granted. King appealed Respondent's order to the 5th DCA and lost.(Ex 71,72,73)

Respondent also requested a closed hearing to remind the attorneys involved of their ethical obligations to try their cases in Court and to restrain their inflammatory remarks. The Respondent planned this meeting because he was concerned that this already high profile case was going to have to be transferred to another county if the State Attorney kept making press with his comments. King has a history of making out-of-Court statements, including calling a defense attorney a "weenie" and stating that a Circuit Court judge had insulted a jury by not putting a defendant to death. (Ex 74,75)

The meeting was going to be closed because having an open meeting to criticize the public comments would not only have aggravated the news exposure but would have undoubtedly been perceived by King as a personal attack.

Having failed to obtain a reversal on Respondent's deposition order, Judge Swigert mysteriously vacated Respondent's Order of Assignment for the reason that a Circuit Court Judge was available. This was not true.

Immediately thereafter, King filed a Motion for Rehearing before Judge John Booth in Hernando County. Booth refused to disturb Respondent's Order and the deposition was taken. (Ex 77)

Unknown to Edwards, Thurman, King, and Swigert, Respondent had chosen and sworn two juries for felony trials and scheduled them on the docket.

There were no Circuit Judges available for the trials. Paul Norville, the Assistant State Attorney assigned to the cases, came to the Respondent during County court proceedings in a panic asking what he should do. The Respondent explained the events to Mr. Norville and asked him if it was the State Attorney who

obtained the Swigert order vacating Respondent's assignment. (Ex 78, p 5, L20)

As it turned out Respondent guessed the play right but not the players. Through a series of telephone calls Respondent established that Judge Edwards had discussions with 3 individuals about Respondent's rulings in the Barrett case.

( ) He then obtained Swigert's order on the false pretense that another Circuit Judge was available to do Thurman's work. (Ex 79,80,81)

Even though Defendant's attorney had no objection, Edwards' excuse for removing Respondent from the Barrett Case was his concern that a meeting was planned where the defendant would not be present.

- PAGE 27 -

After some thought Respondent wrote Edwards a letter asking him if the Defendant was present at the meetings Edward had to dis--discuss the Defendant's case. (Ex 8)

Edwards refused to reply.

Despite the fact that the 5th DCA had upheld Respondent's decision, despite the fact that the closed meeting, unobjected to by

both the State and Defendant, was for a good reason, despite the fact that ex parte communications were going on all over the place, despite the fact Swigert's order contained a lie, despite the fact that two felony jury trials got left in the lurch, and despite the fact that King immediately made use of Respondent's removal to try and obviate the 5th DCA ruling in the case, the newspapers ignored the conduct of all involved and criticized Respondent only, including yet another public call for a Commission investigation. (Ex 83) Indeed this confrontation became the basis for Charges 1F, 5B, and 6A of the complaint against Respondent, all because he ruled against King in a murder case and attempted to prevent his office from unethically disparaging the reputation of Defendant's attorneys in the community from which he was expected to choose his jury.

It seems to Respondent that counsel for the Commission could spend its time better by contacting the United States Justice Department concerning possible conspiracy to violate the civil rights of Defendant Barrett by having a favorable Judge removed from his case by state officials under color of law.

The Barrett case ultimately had to be moved to another

county because of pretrial publicity. (Ex 84)

Shortly thereafter Sheriff Charles Dean initiated several confrontations with the Respondent.

First, Dean tried to pressure Respondent into being more lenient to help solve the jail under-spacing problem (Citrus County has been

under Federal suit and threat of Federal suit continuously for most of the last decade, beginning at a time when Respondent did not even live there). He did this by having his jail administrator seek the assistance of the County Commission which of course controls the purse-strings of the Office of the County Court Judge.

Standing up for the independence and integrity of the Court, Respondent told the Commission to forget about it. (Ex 85)

After the newspapers bashed Respondent for not caving in to the Sheriff and the County Commission, (ex 86) Dean obtained an other from Swigert creating a Citrus County Jail Inmate Population Control Committee (hereinafter "Jail Release Committee"). (Ex 87)

[THIS DOCUMENT CONTINUED IN VOLUME FOUR]

93-713

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME FOUR

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

INDEX TO APPENDIX

Document	Description	Page
	VOLUME ONE	
1	Opinion of the Florida Supreme Court In Re: Judge Graham	2
2	Findings of Fact, Conclusions of Law and Recommendation for Removal	19
3	Judge Graham's Proffer to an Empty Courtroom	63
4	Excerpts from the Record Demonstrating the Conduct of the JQC During the Proceedings	71
5	Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings	97
6	Excerpts from the Record Where Proffers were Denied	125
7	Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner	173
8	Affidavits Related to JQC Misconduct	180
9	Excerpts from the Record Supporting Reasons for Selective Prosecution	191

VOLUME TWO

10	Federal Questions Preserved	213
11	Excerpts from Deposition of County Court Judge Woodrow Beauchamp	359
12	Excerpts from Deposition of former Circuit Court Judge Harry Lee Coe	381

VOLUME THREE

13	Excerpts from Deposition of former Chief of Justice of the Florida Supreme Court Raymond Ehrlich	408
14	Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992 (Exhibit 126 of Show Cause Response)	423
15	Excerpts from the Report of the Bench/Bar Commission, January 1993.	427
16	Opening Statement of Judge Graham	436
17	Closing argument for Judge Graham	445
18	Excerpt from Show Cause Response	557

VOLUME FOUR

18	Excerpt from Show Cause Response (Continued from Volume Three)	601
19	Excerpts from Judge Graham's Reply to Reply	655
20	Letter from Brad King to Florida Judicial Qualifications Commission with attached newspaper editorials	657
21	Notice of Formal Charges	666
22	Amendment to Notice of Formal Charges	688
23	Excerpts from transcripts of the proceedings	698
24	Excerpts from transcripts of the pre-trial conference	722
25	Excerpts from Transcripts of Proceedings Before JQC July 31, 1992 (Second Rule 6b hearing)	746
26	Answer to Affirmative Defenses and Motion to Strike Demand for Jury Trial	756
27	Order Granting in Part Motion of Limine and Limitation of Witnesses	759
28	Florida Judicial Qualifications Commission Rules	762

29	Listings of Judicial Disciplinary Codes and Procedures by State	776

VOLUME FIVE

30	Fourth Amended Motion to Dismiss	800
31	Florida Constitutional Provisions	867.5
32	Applicable Excerpts of the Florida Code of Judicial Conduct	874.5
33	Wisconsin Statutes	878.5
34	Public Response to JQC Proceedings Excerpts from Exhibit to Show Cause Response #174	884
35	Public Response to Formal Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108B	898
36	Public Response to Adverse Publicity Prior to Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108A	907
37	Motion in Limine dated February 18, 1993	916.5
38	News Article, Citrus County Chronicle, Sept. 15, 1988 (Judge says some attorneys act goofy)	934.5

39	Motion for Continuance dated December 18, 1992	937.5
40	Motion for Continuance dated January 13, 1993	961.5
41	Resume of Judge Graham	971.5
42	Excerpts from Transcript of Proceedings before the JQC May 18, 1992 (First Rule 6b hearing)	975.5
43	Motion for Continuance dated February 10, 1993	983.5

VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

Swigert appointed Respondent to the Jail Release Committee without talking to him. Fortunately, Respondent had on a prior occasion discussed the subject of Jail Release Committees with Judge Oliver Green of the Committee on Standards of Conduct Governing Judges. At that time Green had advised Respondent that he believed there were some very serious ethical problems with these types of committees unless they were very carefully structured.

The Jail Release Committee as created by Swigert consisted of 3 members, Roberta Moffatt (Dean's jail administrator), King, and Skip Babb (the Public Defender). When the jail reaches a population of 178 inmates, Moffatt calls a meeting.

Moffatt, King, and Babb (or their appointed substitutes) then review the files of all the inmates including criteria such as their previous criminal records, their ties to the community, the severity of the charge and their attitude in jail. Thus each case is determined individually and on the merits of the nature of the offense, the defendant's record, and his attitude. In other words, the Jail Release Committee substitutes their judgment on the relative sentences of the inmates in place of the sentencing Judge's

judgment. This procedure is radically different from those which provide for

release of all inmates who have served a specified percentage of their sentence or otherwise release prisoners on criteria which do not involve the facts of the inmates' individual cases.

With Sheriff Dean present Respondent contacted Acting Chief Judge Victor Musleh on his speaker phone and discussed this plan with him. He shared with Musleh the numerous flaws explained to Respondent by Judge Green, two of which were particularly serious. First, the meetings were ex parte hearings on the merits without the defendant's presence and without notice. Secondly, defendants represented by the Public Defender had legal assistance but those having private counsel or none at all were not represented.

With these considerations in mind, I informed Judge Musleh that I would not serve on the Jail Release Committee and explained to him my reasons.

Respondent then had a discussion with Dean about the situation and asked him if his conscience wouldn't bother him if he

released someone before being rehabilitated and they hurt someone. He said no, that he must have a different conscience than Respondent. Respondent agreed.

Dean subsequently lied in the newspapers saying he had no idea why Respondent would not serve on the Jail Release Committee. He also stated that in the past when he had inmate population problems **he didn't have any problems with Damron letting people out**. (Ex 148, p 2, column 2, paragraph 3)

On several occasions Edwards contacted Respondent regarding "input" into these release decisions. (Ex 88) To protect himself, Respondent was forced to put his objections in writing to Edwards and ask him point-blank not to ask for any participation. (Ex 89)

Again, because Respondent stood up for the independence of the County Court, the newspapers based him. (Ex 90)

- PAGE 30 -

Dean then **initiated** a further confrontation with Respondent by ordering the bailiff to leave the Courthouse unguarded at the end of Court proceedings. This was a dramatic and abrupt change from Dean's procedure for the past seven years.

Respondent discussed the problem with Edwards explaining to him that Dean was in effect saying be lenient, reduce the jail population, or I will in effect put a loaded gun to your head by withdrawing Courthouse security. Edwards said, "Gee, I know Charlie. If he wanted to hurt you,

he would just take out a gun and shoot you."

Respondent wrote Dean explaining to him the danger associated with leaving the Courthouse unguarded. Despite the fact that one can get a pizza delivered in Citrus County faster than a 911 response, (Ex 91A,91B) Dean responded by instructing the Court to "Call 911". (Ex 92)

When the bailiff refused to follow instructions to leave the Courthouse unguarded **without notifying the Judge he was leaving**, he was transferred from his Court duty to jail duty and quit his job in disgust. (Ex 93)

When Respondent let the County Commission know that he would be requesting a full-time security guard for the County Court in his next budget, the newspapers again sided with Dean adopting his characterization of a full-time Courthouse security guard as a "valet to Judge Graham". (Ex 94)

Neither Dean nor the newspaper explained why they did not have similar objections to the **four** full-time security guards and high tech x-ray and metal detection equipment provided by Dean to protect Thurman and Edwards.

The County Commission granted Respondent's request over the

objection of Dean, the County Administrator, and the newspapers. (Ex 95)

This confrontation surrounding the Respondent's efforts to obtain court security was at one stage of the proceedings actually charged against the Respondent as an **abuse** of his office. ( ) The Commission later abandoned this charge when it became apparent how silly it was.

Afterwards Dean continued to insist on sending a Sheriff's bailiff to **all** Court proceedings (including small claims cases). When questioned about this he said that the law required it. Actually, the law requires a Sheriff to appear at each **term** of Court, not each **session**. When the County Court bailiff offered to

be deputized to avoid the unnecessary duplication, the Sheriff refused.

Two ex-deputy sheriffs who were bailiffs under Dean have reported that they were instructed to be the "eyes and ears of the Sheriff's Department" in Citrus County Court. This intelligence gathering mission costs the citizens of Citrus County over $20,000.00 per year. Respondent suspects that many of the charges filed against him are the result of this "monitoring". (Ex 133, especially Ex 134 which appears to be the source of Formal Charge Number 2K)

Respondent then became involved in yet another confrontation with Dean when Steven Webb, a Defendant charged with a second DUI offense in just 2 years was released without bond because he had been doing free car work for an investigator in the Sheriff's Department (Ex 96,97,98)

Dean then filed a complaint **against himself** with his friend King who promptly exonerated Dean. (Ex 99) Respondent thanked King for his investigation and asked him to publish his report as widely as possible so that defendants with friends in the Sheriff's

Department would know the proper procedure for getting released from jail. (Ex 100)

- PAGE 32 -

This case precisely demonstrates the politics and favoritism in the legal system which both the public and the Respondent are sick of. Despite the fact that Respondent was twice elected to eliminate this conduct from the Citrus County Court, the Commission has found the Respondent guilty of unethical conduct for punishing Webb for his complicity in this conduct.

In a similar occurrence King's brother was "unbooked" in Tavares for DUI and released on his own recognizance on a drug offense on May 21, 1992. (Ex 101) The booking personnel must have read King's procedure for the proper handling of important people, their friends, and their relatives.

The newspapers having failed to defeat Respondent at the polls and having failed to get the Commission's attention through local editorials decided that a front-page, statewide feature story was needed. (Ex 102) When Respondent saw this article with quotes from Thurman that Judge Graham was "crazy" and quotes from Edwards that Graham "shouldn't be a Judge" he knew that it

was only a matter of time before Commission papers would be received in the mail.

This feature story was titled the "Caped Crusader" because Respondent at one time has a small Batman decal in the rear window of his car. Strangely enough the newspapers have ignored the fact that Edwards has driven around Citrus County for years in a little red pickup truck with a

front license tag bearing the picture of a raccoon with lifted tail exposing his bottom in vulgar detail with a caption of "Registered Coon Ass". (Ex 103) Respondent has had two separate individuals bring this to his attention and can only wonder how the Times would style a feature story on Edwards.

However, the twisted and unfair treatment of Respondent with respect to such trivial matters has been a routine practice including news reports ranging from criticisms as wide-ranging as his surfing habits to how close he dances to his girl friend and how many diet

cokes he drinks before driving home. (Ex 104,105)

Respondent's experience over the past 8 years is best summarized in his written statement to the Commission which is reprinted here:

STATEMENT

Pursuant to FJQCR Rule 6(b), the undersigned in response to the Amended Notice of Investigation in this cause does hereby submit this his written statement refuting the alleged misconduct.

When I was elected the County Court Judge for Citrus County, I accepted the stewardship of a Court system which had in the words of the Judicial Qualifications Commission been "irreparably damaged" by over a decade of misconduct by our previous elected judge. (In Re Inquiry Concerning Judge Damron, 487 So.2d 1, 6-7, Florida Sup. Court 1986.)

I chose to believe everything the JQC wrote in their report except the conclusion that the system was irreparable. I then set my mind to the task of reforming the Citrus County Court despite the overwhelming opposition of those who supported and endorsed that corrupt judge, and who in many instances participated in and were benefitted by his misconduct, and who in one way or another are involved in or related to the complaints which have now been filed against me.

Through great sacrifice and hard work I have succeeded in returning to the people of Citrus County a decent, honest, open Court free of politics, favoritism, and friendship. To accomplish this required strict compliance with the positive ethical obligations of the office of a judge. Specifically, I have had to protect the independence and integrity of the Court by maintaining and enforcing high standards of conduct, by insisting on proceedings which promoted public confidence in the judiciary by maintaining order and decorum in the Court, and by taking disciplinary action against those who have engaged in unprofessional conduct.

Unfortunately I have learned that when you stand up for what is right in a local legal system which has been irreparably damaged by a prior corrupt judge that you often stand on the toes of those who either tolerated, benefitted from or approved of his conduct.

These individuals include both Circuit Judges for Citrus County, the State Attorney, and the Citrus County Sheriff.

The charges which have been filed against me have not been filed because I am unethical but because I am ethical. They are not filed because I am a bad judge but because I am a good judge. They are not filed because I have done wrong but because I have persisted in standing up for what is right. They are filed against me because I have refused to cooperate and become a part of the deplorable system I am fighting.

I know that I have been categorized by my political

enemies as being bizarre, unethical, and erratic. However, when you hear both sides of the story, you will understand that I am an honest, sensible, straight-talking judge caught up in a bizarre, unethical, and erratic small county legal system rife with petty, vindictive politics, bent on revenging the ouster of Leonard Damron and dedicated to the replacement of myself with someone who will once again run the County Court to the satisfaction of the attorneys, judges, sheriff, and newspaper editors.

The people of Citrus County who for over eight years have watched firsthand this struggle for the reform of their Court already understand this and rewarded my efforts by overwhelmingly reelecting me to public office despite four years of microscopic and hostile examination of my every move as a County Judge.

The complaints which have been filed against me are filed by those who are disappointed in that democratic decision. The complaints which have been filed are unfounded. I deny any unethical conduct in the due administration of justice in the Citrus County Court. I request that formal charges on each and every complaint be filed and that we proceed to a trial of these complaints in Citrus County, Florida.

I further request at the conclusion of these proceedings that the Commission commend me for the courage and dedication I have demonstrated in defending the independence and integrity of the judiciary, and that it recommend to the Florida Supreme Court those remedial actions necessary to correct the problems of the Citrus County legal system.

Respectfully submitted,

As a result of the above-stated background, the local Bar, the local press, the local politicians, and the Sheriff do not like him and want his removal.

The attorneys want him out because he won't have secret pretrial conferences, he won't rubber-stamp their plea bargains, and he won't tolerate misconduct in Court.

The local press wants him out because he won't let defendants come to Court drunk, cursing, or lying. He won't let them win all of their cases in Small

Claims Court and he won't fine anyone $350.00 for stealing a 50¢ newspaper.

The local politicians want him out because on two occasions

he has put their children in jail (County Commissioner Skip Hudson's son was sentenced to 30 days in jail when during sentencing he told the Court that it was none of its business who he bought his dope from, and County Commissioner Alex Griffin's daughter was sentenced to jail when she violated probation for

willful and wanton reckless driving and refused to offer any reason for her violation.

Circuit Judge Thurman wants him out because he won't let him exercise illegal jurisdiction over misdemeanor jail sentences or be vulgar in Court.

Circuit Judge Edwards wants him out because he won't let him forget his part in the Damron debacle, won't let him build million dollar Court facilities without the public's knowledge, and won't excuse his friends from jury duty.

Sheriff Dean wants him out because he won't let criminals out of jail to solve his jail under spacing problems, won't let him build million dollar Court facilities without the public's knowledge, and won't let him release defendants from jail because they have friends in the Sheriff's Department.

State Attorney King wants him out because he won't let him be rude in Court or lax in the filing of informations, he will not let felony defendants be prosecuted in misdemeanor Court without some explanation, and he helped defeat his buddy Gordon Oldham in the 1984 election.

The newspapers have placed Respondent under a hostile, twisted, warped, and microscopic examination including numerous vicious editorials based on one side of the story, and calling on many occasions for the Commission to remove him. (Ex 107)

The people of Citrus County however have overwhelmingly reelected him despite the united opposition of the aforementioned groups and want him to stay. (Ex 108A, pre-complaint letters of support, Ex

- PAGE 36 -

108C post-complaint letters of support, Ex 108C post complaint demonstrations of support, Ex 108D post-hearing letters of support)

This case will decide who chooses the trial judges in the State of Florida, whether it will be the attorneys, politicians and big shots or the People. If the former we will be doomed to a judiciary rife with cowards constantly looking over their shoulders at the Commission afraid to speak out against misconduct. If the latter we will encourage the continued participation of brave men willing to stand up for the independence and integrity of our courts.

- PAGE 426 -

CONCLUSION

Justice Ervin had this to say about the very first ethics case filed by the Florida Judicial Qualifications Commission:

This is not the first case in American jurisprudence involving public criticism of the judiciary. Other courts have clearly set out the boundaries within which critics must remain. Fortunately for our democratic society, these boundaries are wide.

Before any man may be punished for speech in a newspaper critical of the courts, the record must show that his criticism has created a clear and present danger of disrupting the administration of justice. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962); Craig v. Harney, 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546 (1946); Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295 (1945); Bridges v. California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941). Disruption of the administration of justice is shown by evidence that a particular party to litigation has been prejudiced, that the outcome of a trial has been influenced or that a petit jury has been affected; Wood v. Georgia, supra.

* * *

The truth may not be punished, either criminally or civilly. Garrison v. Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Moreover, even if Judge Kelly's criticisms of official conduct in the Sixth Judicial Circuit were in error factually and were defamatory (a matter not charged against him), Judge Kelly would
remain protected by the constitutional guaranty of free speech, so long as there has been no finding that his statements were knowingly false or made with reckless disregard of their truth or falsity. Pickering v. Board of Education, supra; New York Times Co. v. Sullivan, supra; Garrison v. Louisiana, supra; St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968).

* * *

Tragic isolation implications could result from the precedent of discipline of Judge Kelly for speaking out on the need for court reform. The people of Florida will suffer if their judges must restrict their public statements to uncritical banalities in order to avoid the threat of similar sanctions. The right to disagree with others in matters of governmental policy is one of the cherished rights of American citizenship. It cannot be watered down by a board of censors or subjected to the possibility of sanctions that make its exercise a fearful prospect. The courts exist to serve the people. If the courts are not operating as efficiently as is humanly possible, then the people have the right to hear this from the individuals who are best able to tell them--the judges.

If the First Amendment does not protect a judge's right to speak in circumstances such as these, then we are bound to have in Florida a timorous lot of judges lacking independence, afraid of their judicial shadows, and fearful to exercise conscientiously the right to speak out in favor of judicial reform.

I do not believe the reach of the Code of Ethics Governing Judicial Conduct can be construed to deny Judge Kelly his privilege of speaking out under the related circumstances or that in doing so he violated the code. In the setting in which he exercised his right to speak he had certain inherent privileges, if not a duty to seek judicial reform.

* * *

Judge Kelly admits to being somewhat of a reformer, particularly in the judicial area--a trait which is often suspect by those who cling to the status quo. However, this trait, even if displeasing to lovers of ancient or outmoded forms, ought not be equated with irrationality or mental instability.

* * *

In summation, I think this is a regrettable inquiry that probably ought never to have been pursued. The Commission should have been extremely cautious in launching an inquiry in the sensitive

area of an elected official's inherent right to function in the sphere of free expression.

There is every reason why a corrupt, senile, insane, venal or obviously vindictive judge should be subjected to inquiry. So should one whose conduct is so habitually gross it clearly passes beyond the bounds of traditional and well-recognized judicial decorum or whose lack of a becoming judicial demeanor or whose arrogance obviously reaches the point of habitual intemperance. The Commission can unquestionably discipline in those areas of judicial conduct. But here the Commission in its very first inquiry essayed to venture into a very nebulous and debatable situation involving the psychological motivation of a judge and in the process equated his right to speak out on the subject of judicial reform as the prime example of his unbecoming conduct and bad behavior.

By so venturing, we have at our threshold for the first review of findings of the Commission, issues that set at stake the most fundamental concepts of a free democratic society.

The Commission brings into question the right of an <u>elected</u> judge to speak publicly on matters of public concern and the right of the people of this state to be informed of the administration of an important function of their government. The courts of this country have jealously guarded these rights against encroachments of all kinds.

Central to this democratic process is access to accurate information, for without this information the people cannot exercise their control of government.

* * *

Woven throughout the fabric of these proceedings is a disturbing question: Under what conditions may the elective process be nullified by the discipline or removal of elected judicial officials? The question is a disturbing one because in a democratic

society the people's elected officials should not be disturbed in their tenure except in instances of great aggravation.

- PAGE 429 -

In Re Kelly, 238 So.2d 565, 574 (Fla. 1970) (dissenting opinion).

These words spoken by Justice Ervin some 23 years ago come back now to haunt the court. During the last quarter of a century the Commission has become ever more powerful in the execution of its duties. Another regrettable inquiry is now before the court that probably ought never to have been pursued.

It was pursued because the Commission, like Chief Judge Swigert, believed the "Horror Stories" about Judge Graham reported by the newspapers and his political opponents and did not bother to talk to him before jumping to the conclusion that what they heard was true.

If like Ms. Willis they had listened to the other side of the story before filing formal charges, they would not have been filed.

But instead they told Judge Graham they would listen to him for only five minutes per charge, an impossible time limit to accomplish the complicated explanations involved in this case.

So Judge Graham said let's go to trial and he told the public what was going on. That made the Commission angry. Bad judges are supposed to buckle at the knees before the mighty power of the Florida judicial Qualifications Commission. Furthermore, Judge Graham in exercising his right to free speech explained to the public that he intended

to prove that he was right when he said attorneys had misbehaved and politics, favoritism, and friendship had in the past been pervasive under the administration of Leonard Damron. He also announced his intention to exercise his right to use his office to defend himself.

If the Commission was angry before, now it was infuriated. Judge Graham was actually going to defend himself and it was clear now that they had opened up a pandora's box that was going to reveal some gross truths about the Citrus County Judicial System.

They then systematically set about doing everything they could to prevent Judge Graham from defending himself including

adding a separate charge against him for asking for public information and using his office to defend himself.

The deeper the Commission got into the case the more they realized Judge Graham was right and the more they realized how big a mistake it was not to have given him a little time to talk to them in a confidential hearing. However, instead of dropping the charges they proceeded to force him to a hearing unprepared, his subpoenas quashed, his evidence suppressed, his witnesses excluded, and under circumstances so severe that he could not possibly continue.

But he didn't cave in. Their rage built. Who is this man to challenge us? He's actually insisting on the rules of evidence. He's asking to proffer argument and proof. He's demanding to view the hundreds of documents the Commission

just wants to throw into evidence.

So what do they do? They threaten to put him in jail if he insists on acting like an attorney. So he says fine. I hope you have orange pajamas in my size cause I'm not quitting.

And at that point the Commission does the only thing left to do. It resigns itself to the fact that it is going to have to suffer through eight days of giggling, talking, yawning, laughing, and sleeping in the jury box, as this fool insists on presenting evidence when they have already known for months they are going to find him guilty.

Unfortunately, they forgot that the people of citrus county were watching. Funny thing about a television camera in court. Judge Graham knows this from experience. After five minutes you forget it is there.

So probably 30 to 40 thousand citizens watched as the Commissioners read newspapers and slept through their Judge's hearing. They watched as the Commission refused to let their Judge call his witnesses. They watched as the Commission refused to let their Judge introduce his evidence. They watched as the Commission refused to allow their Judge to respond to a policy emergency.

They watched as the Commission forced their Judge to sit down when others were

allowed to stand. They watched as the Commission refused to let their Judge have a lunch hour. They watched as the Commission laughed and yawned at their

Judge. And they watched as the Commission let their Attorney physically shove their Judge around the courtroom.

They watched as witness after witness confirmed the corrupt conduct of the public officials running their judicial system. They watched as witness after witness testified to Attorney misconduct including

hallway plots to intentionally cause trouble for the Judge.

They watched as police officers,civic leaders, assistant state attorneys, assistant public defenders, and private attorneys testified that their Judge was a consistently professional, courteous, and considerate Judge.

They watched King testify; political surveillance and "faggot" memos. They watched Dean testify; fix a ticket for a deputy?; that's OK. And they watched the equally dismal testimony of the other witnesses called by the Commission including their admissions of hateful bias against their Judge.

And then they watched it all over again when the cable companies re-ran it in full and unedited.

They know their Judge is not guilty. They know that he is being persecuted for not going along with a few bad attorneys and the politicians who ran the show under

Damron. They know that their Judge is a good Judge who did not receive a fair trial. And they know if they lose their Judge it is not because he was unethical but because he was too honest for the Citrus County Justice System to tolerate.

- PAGE 433 -

This is truly a regrettable inquiry that ought never to have been pursued.

In closing Judge Graham leaves you with the thoughts of four individuals:

First, a fellow named Machiavelli:

"It must be considered that there is nothing more difficult to carry out nor more doubtful of success, nor dangerous to handle, than to initiate a new order of things for the reformer has enemies in all those who profit by the old order, and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favor; and partly from the incredulity of mankind, who do not truly believe in anything new until they have actual experience of it. Thus it arises that on every opportunity for attacking the reformer his opponents do so with the zeal of

partisans, the others only defend him halfheartedly so that between them he runs great danger."

The Prince

Secondly, the twenty-sixth President of the United States:

"It is not the critic who counts nor the man who points out how the strong man stumbled, or where the doer of deed could have done them better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly, who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

Theodore Roosevelt

Finally, and most importantly, two citizens of Citrus County

who wrote a letter to their Judge very similar to

hundreds of others which have been mailed to Governor Chiles:

Doris and Douglas Holdread
1856 W. Gardenia Drive
Citrus Springs, FL 34434

Hon. Judge Gary Graham
110 N. Apopka Ave.
Courthouse Square
Inverness, FL 32650

Dear Judge Graham,

Our hearts are heavy. We feel a real miscarriage of justice has been committed in Citrus County, Fla. One could weep for the loss of fairness and disregard for the people in our fair County.

We have been supporters of yours since our arrival in 1985. We have been privileged to hear you speak on several occasion and have both been called for jury selection twice. You have come across a true gentleman who has scruples and a sense of fairness.

We have fought the fight to the best of our abilities. We've written to Gov. Chiles, the JQC, the Citrus Chronicle Letter's Also call ins and defended you, proudly, whenever the need arose.

Please know, Judge, we are praying that you will take your fight to the Supreme Court, will remain a practicing Atty. and will run for Judge again. We need you to continue the fight against the improprieties imposed by the political powers that be.

Feel heartened in that your supporters feel stronger than ever that your place is as the Honorable Judge Gary Graham of Citrus County, Fla.

Warmest regards,

/s/
Doris and Doug Holdread

Respectfully submitted,

s/ Gary G. Graham
Honorable Gary G. Graham
County Court Judge
Citrus County, Florida
One Courthouse Square, Room 215
Inverness, Florida 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

i HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Supreme Court of Florida, Supreme Court building, 500 S. Duval Street, Tallahassee, Florida 32399-1925, and a true copy by United States mail to Mr. Terrance A. Bostic, Special counsel to the Florida Judicial Qualifications Commission, P.O. Box 3401, Tampa, Florida 33601-3401, this 11th day of May, 1993.

S/ Gary G. Graham
Gary G. Graham

THE NINETEEN REMAINING CHARGES

The Court should reject the Findings of the Commission with respect to each and every remaining charge of misconduct for the reason that they are not supported by clear and convincing evidence.

CHARGE 1A

> The Commission charged that:
> On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

* * *

The Commission in its Findings states that it relies on the testimony of Cindy Cokely (T, P 321-354), Clark Stillwell (T, P 443-462), the Bar Association's statement (R2) and the Respondent's written statement (R).

Purportedly on the basis of this evidence the Commission found that the Respondent made "a number of disparaging and insulting remarks" including statements that, "...Local attorneys were not on time, bickered among themselves, acted

- PAGE 38 -

goofy, did not talk like attorneys or dress like attorneys and that they should put them in jail where they can read law books and learn how to act in court."

* * *

- PAGE 39 -

There is no evidence whatsoever in the record that these public statements made to a newspaper with respect to attorneys in general were not true!

Cindy Cokely did not testify that any of the statements were untrue. Clark Stillwell did not testify that any of the statements were untrue. Not a single witness stepped forward to testify that attorneys in Citrus County had not been late, bickered, or acted goofy.

Indeed when the Respondent attempted to prove it through the introduction of court orders and transcripts of official court proceedings the Commission refused to allow it![2] ( ) If the Respondent had been allowed to address the issue of Citrus County attorney misconduct he would have proven by these documents that they had.

1. Completely failed to appear for court proceedings (A 157,161)

---

[2]The Commission took the unusual position that proven attorney misconduct made after the Respondent's statements were not cooperative circumstantial evidence. This represents a neat theory since ostensibly if the Respondent had made and kept transcripts of attorney misconduct before his statements he would have been guilty of using the "resources of the State of Florida to conduct a private investigation." (See Charge 4J of the formal charges)

2. Called defendants "horses asses" during trials (A 158)
3. Doodled during court proceedings (A 159)
4. Failed to file notices of appearance before representing clients (A 160,162)
5. Appeared in court without their clients, without their pleadings and without their law (A 163)
6. Called Assistant State Attorneys "little lady" and "boy" (A 164)
7. Walked out of court before being excused and before their proceedings were finished (A 165)
8. Argued out of turn and yelled "bull" at each other ( )
9. Generally engaged in numerous acts of unprofessional conduct (A 166)

Neither does the statement of the local Bar (R 2) deny the truth of the Respondent's public statements. It could not. Indeed, the gist of the Bar statement is that it considers the public criticisms of attorneys in general by a judge without identifying any particular miscreants to be a per se violation of the Florida Code of Judicial Ethics.

This is not true. The public has a right to know about matters concerning the due administration of justice. They have a right to know especially from these in the best position

to be informed on these matters of interest. Those in a position to know of these matters of public interest have a free speech right and moral ethical obligation to speak up. Accordingly, there have been many occasions where judges and other prominent members of the judicial system have criticized attorneys.

In a law review article titled "A Sick Profession?" Former Chief Justice of the United States Supreme Court had the following comments to make:

> "Montaigne said, long ago, that an advocate is sometimes well advised to state his final proposition first. My final proposition can be roughly stated as follows: (1) the legal profession as a whole has a very

poor standing; (2) there are many causes for this; some of them are the incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and (3) there is something we can and ought to do about this as the English bar and bench did a century ago.

I find no pleasure in saying to you that the majority of lawyers who appear in court are so poorly trained that they are not properly performing their jobs, and that their manners, professional performance and ethics offend a great many people. Those who do not accept these harsh premises will not accept the proposal I intend to make.

We are all familiar with the gibes and taunts which have been directed at lawyers for centuries. Literature is filled with them. You remember that Samuel Johnson, himself a lawyer, was the author of the quip, "I do not wish to speak ill of any man behind his back, but the fact is he is an attorney." But I need not go back into ancient history to make this point because many surveys of the public opinion testers often make the same point. In one recent poll the Louis Harris organization made a survey of which occupational groups stood highest in the esteem of the public. Doctors were the highest, followed by clergymen, educators and judges, but lawyers did

not get into the top fourteen categories.

There is no single cause for what, in Madison Avenue terms, would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance.

> From more than twenty years of active practice, only part of which was in the courtroom, and from more than ten years on the bench, I think I have gained a fairly reasonable and representative view of what goes on in courtrooms. When I first reached some tentative conclusions some years ago, my appraisal of courtroom performance was so low that I began to check it with lawyers and judges in various parts of the country to see whether I had misjudged. From time to time, for example, in meetings with judges, I would ask what proportion of the cases tried before them were properly presented. The highest figure ever stated was twenty-five percent; the lowest was ten percent. From that general and sweeping proposition, I began to probe for the specific reasons why trial judges--the best available observers--took such a dim view of the performance of lawyers in the courts. The answers covered the entire range of the acts performed in the courtroom.
>
> On the most favorable view expressed, seventy-five percent of the lawyers appearing in the courtroom were deficient by reason of poor preparation, inability to frame questions properly, lack of ability to conduct a proper cross-examination, lack of ability to present expert testimony, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues and lack of ability to make an adequate argument to a jury. Also very high on the list of deficiencies was the lack of an understanding of basic courtroom manners and etiquette, and a seeming unawareness of many of the fundamental ethics of the profession.
>
> * * *

The second category has to do with manners and ethics. Some of the studies made in recent years in the effort

to understand the jury function give strong support to the observations of judges and lawyers. The things jurors seem to find offensive are the bad manners of lawyers who abuse witnesses,

lawyers who snarl a each other across the counsel table, lawyers who are discourteous or slovenly in their communications with the judge and the jury. The jury surveys confirm a fact well known, I am sure, to every one of you - that bad manners of a trial lawyer almost invariably count against his case. This is a proposition not recognized or not accepted by a substantial number of lawyers who think they impress clients - and perhaps prospective clients - by being known as the "gutsy lawyer." We will come back to him later.

> A businessman, who served on a jury recently took the trouble to write an article on his observation. He said:
>
> The most important persons in the courtroom to the juryman are the attorneys who participate in the trial...The attorney is always on the spot. He is the focus of attention his appearance, manners, logic, and what he puts value upon are the factors that bring jurymen to conclusions.

He mentioned the bad manners, the bullying and strutting of lawyers,the belittling and confusing of witnesses, and of this he said:

> Later, in the jury room the entire group expresses disapproval of the attorney's methods. Though not on trial, the attorney was tried by the jury, a verdict reached, and his client suffered from his behavior.

* * *

However, these things I have recited cannot explain the decline of the "trial bar". None of these factors can account for the ineptness, the bungling, the malpractice, if you will or the bad manners and bad ethics which can be observed every day in courthouses all over the country.

As a solution to the bad manners and unprofessional Justice Berger suggested the following:

> Having expressed these critical views about the substandard performances of the majority of lawyers who appear in courts, it is only fair that I make some comment about the performance of judges. The trial judge can do relatively little about bad preparation, inept examination of witnesses, or general incompetence of lawyers, but he can do a great deal about the bad manners and bad ethics of the fringe of the legal profession who sometimes make the trial look like a saloon brawl. I regret to say that too few trial judges exercise proper control of their own courtrooms to enforce minimum standards of etiquette, deportment, and ethics.

Unfortunately for the Respondent the local Bar and the Commission not only disagree with Justice Berger, but want to destroy the Respondent for having taken his advice to heart. Strange indeed that neither the Bar nor the Commission called for the ouster of Justice Berger who at that time was a Judge of the United States Court of Appeals Washington, D.C. Surely his statements were more critical than Respondent's.

In November of 1990 United States Supreme Court Justice Anthony Kennedy was reported by Time Magazine as stating that, "We see shoddy practice in every court in the country including the Supreme Court of the United States." (A166)

On March 12, 1993 United States Supreme Court Justice Sandra Day O'Connor gave a lecture at the University of Houston. She said in a survey of lawyers half of them described their colleagues as "obnoxious". She said, "Lawyers are compared frequently and unfavorably, I might add, with sharks, snakes, and skunks". (A167)

- PAGE 45 -

Other public statements include:

1. "Someone needs to say it; many trial lawyers today are far too rude - to clients, to judges, and shamefully, to each other. Unfortunately, I see this in my practice frequently, and I hear similar stories around the country." James A. George, Attorney at Law, Trail Magazine, May 1988.

2. ". . there is no justification for members of our profession to be other than courteous to each other. . The practice of law today is fraught with enough unavoidable difficulties without the burdens which too frequently result from displays of discourtesy among ourselves." Ivan E. Barris, President of the Michigan Bar Association, The Michigan Bar Journal, August 1980.

3. "Lawyers are becoming very unpleasant people to be with, especially if you are another lawyer. A disturbing number of them apparently believe that the way to deal with opposing counsel is to be impolite, intemperate, and insulting." W.B. Lytton, First Assistant United States Attorney Eastern District of Pennsylvania, ABA Journal, April 1982.

4. "As State Bar President, I was privileged to attend the Wisconsin Judicial Conference and participate in a very interesting discussion that dealt with what lawyers and judges do not like about each other . . . Here are some legitimate complaints that I heard from judges:

a) demonstrable showing of disrespect...,

b) habitual tardiness ...,

c) misrepresentations of fact and law,

d) punitive use of the rule allowing substitution of judges, and

e) failure to cooperate with opposing counsel . . ." Daniel W. Hildebrand, Wisconsin Lawyer, November 1991.

5. "If it please the court," is an expression often heard by a court. Regrettably, in too many instances what follows not only does not

please the court, but succeeds only in raising judicial ire. Similarly, phrases such as brother or sister counsel are frequently a preamble to character assassination." Brian K. Carroll, Attorney at Law, Res Gestae, August 1990.

6. ". . . lack of preparation is the most frequent complaint of trial judges . . .; not only are lawyers late to court, sometimes they do not even bother to call; lawyers mislead the court about the facts and the law, interrupting and judge, slumping somnolently in your chair when judge and jury enter the courtroom and shouting at the judge are tactics guaranteed not to evoke tender treatment from the judiciary; some lawyers take it as part of their job to be rude to opposing counsel." Richard B. Klein, Judge of the Philadelphia Court of Common Pleas, Litigation, Winter 1987.

7. "One of the important topics discussed at the Association's recent Long Range Planning Conference on professionalism concerned restoring our collegiality. Horrible examples of discourtesy and downright meanness were cited and we all agreed - there's a problem, but why and what to do about it?" William A. Martin, Executive Director, Arkansas Bar Association, Arkansas Lawyer, July 1986.

8. "Chesterfield Smith, past president of the American Bar Association, has said that there is an incompetent "fringe" of 20 to 25 percent of the lawyers now practicing whom he 'would not trust to do anything.'" Herbert Denenberg, Former Professor of Law, Temple University, The Family Legal Guide, Wists Publishing Company 1981.

Finally let's look at two examples of how individuals very closely related to this case have spoken about attorneys.

First is Mr. Clark Stillwell. Three times the President of the Citrus County Bar Association (T, p445, L2). He and the Commission want this Court to believe that he earnestly believes that Judge Graham's comments that a few attorneys were not on time, bickered among themselves, acted goofy and did not talk or dress like attorneys is so serious an affront to the legal profession that it required a confrontational meeting among the Administrative Circuit Judge, the Bar Association and the County Judge and a formal written press statement to the news media.

But, what did he, the Administrative Judge or the Bar Association have to say or do about Leonard Damron while, in the

words of the Florida Supreme Court, he irreparably damaged the Citrus County Court system for over a decade? The answer . . . **NOTHING!!!** (T, P461, L5) But did testify as a character witness for him at his trial!

( )

And what did Mr. Stillwell have to say when he had an opportunity to comment on attorneys in Citrus County? In a statement that impugned a specific attorney in particular and

all new members of the legal profession he said that "The most dangerous thing in the world is a love struck 16-year-old. The second most dangerous thing is a brand new lawyer." (A168) (T

)

Secondly, Mr. Joseph Reiter, Chairman of the Commission that has found the Respondent unfit to be a judge for saying that a few attorneys have acted goofy. While President of the Florida Bar Association he wrote an article questioning "Whatever Happened to Professional Courtesy?" discussing the need for a written standard of professional courtesy.

He lamented that "It is unfortunate that these standards have to be placed in writing but it appears that many lawyers are forgetful that they must act as professionals and be courteous to opposing counsel. The ones who abuse the system are a trial upon our legal system and in the long run we'll suffer the consequence of their discourtesies."! The Florida Bar Journal, February 1987.

United States Supreme Court Justices, Judges from the Common Pleas Court of Philadelphia, Bar Association presidents, attorneys, law professors, the Citrus County Bar President and the Chairman of the Commission have criticized attorneys as abusive, slovenly, bad mannered, strutting, belittling, unprepared, poorly trained, offensive, obnoxious, skunklike, snakelike, sharklike, rude, discourteous, unpleasant, impolite, intemperate, insulting, disrespectful, tardy, uncooperative, misleading, mean, and next to lovesick teenagers the most dangerous thing in the world!

They are not criticized in return by the organized bar.

Indeed their insults are published in the bar journals as good advice.

Judge Graham has said that there are many fine attorneys in Citrus County but that some of them are not on time, bicker among themselves, act goofy, and do not talk or dress like attorneys. For this he should be branded unethical and unfit.

Only a group of hostile political opponents, adversaries, envious and resentful of the Judge's success in clearing up the County Court and bent on revenge of their deposed corrupt judge would dare to put forth such an obviously unfounded proposition.

Only a similar group of overzealous commissioners prejudiced by years of one-sided ex parte criticisms and vicious news editorials would agree.

Finally, the Respondent is and only in the twisted world of the Citrus County Judicial system could a judge's apology to ease a tense situation be used as evidence against him that he is rude! Has Chief Justice Berger ever apologized? What about Clark Stillwell? Has Chairman Reiter ever apologized for saying that, "many lawyers are forgetful that they must act as professionals."

Of course not and neither should they for they are right. And neither should this Court commit the serious error of sanctioning an honest Judge for truthful remarks about attorneys.

But the Commission says "Oh my" the judge also said that he should put the attorneys in jail where they can read law

books and learn how to act in Court. What the commission doesn't say is that putting an attorney in jail was mentioned as an appropriate sanction for an attorney who had hypothetically been held in contempt on four prior occasions with less severe sanction.

That the Commission would leave that detail out of its charge and findings proves the truth of the published criticisms that some attorneys are abusive, mean, and misleading.

The pleadings and findings in this case regarding the sanctions the judge would impose are intentionally and maliciously misleading. Only by stating the fifth sanction out of context without the proposed graduated penalties for four previous sanctions would the Respondent's statements seem bizarre or unethical.

Surely it is just and reasonable to sentence an attorney to a jail term for a fifth act of contempt. And perhaps indeed he would use his time wisely to learn the law if he was so punished.

Finally, the Court should consider just how this dispute became the matter of public controversy.

Mr. Bostic throughout the proceedings and the Commission by adopting its findings try to characterize the Respondent in this case as a Richard Kelly clone. An arrogant fellow who like Judge Kelley "hungers for public esteem" --- "with the stolen coin of other men's public reputations."

But how does that conclusion compare with the facts of

this case? Did Judge Graham call a press conference like Kelley? **NO.** He called an attorney to a confidential sidebar and asked him to privately relay a message to his fellow attorneys to shape up. Instead Mr. Hawkes, office buddy to Brad King and Charles Horn, discloses the sidebar to the press for the very purpose of creating a confrontation.

At the time the Respondent could not understand this. Now with the benefit of Attorney Gary Poe's unrebutted testimony it is clear that this confrontation was yet another example of the agreed plan between Mr. Hawkes and Mr. Horn to disrupt the Citrus County Court. (T, P2076-2079)

"The truth may not be punished either criminally or civilly," Garrison vs Louisiana, 379 U.S. 64 (1964). "To the extent that the Board's position here can be taken to suggest that even comments on matters of public concern that are substantially correct . . . may furnish grounds for dismissal if they are sufficiently critical in tone, we unequivocally reject it," Pickering vs Board of Education, 391 U.S. 563.

The conflict between the Respondent and the local bar occurred because a small number of attorneys refused to act correctly in court. It became a public confrontation because an attorney the Respondent trusted unknown to him had conspired to cause trouble whenever possible and invited press coverage.

The Respondent has not violated the Code of Judicial Conduct with respect to this matter. The burden of the Commission is the prove the contrary by clear and convincing evidence. The Commission has never come close.

DOCUMENT 19

Excerpts from Judge Graham's

Reply to Reply

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A

JUDGE NO. 91415

CASE NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

REPLY TO COMMISSIONS' REPLY

CORRECTIONS

Due to the short time allowed the Respondent to research, draft and file his Show Cause Response his Third Amended Motion to Dismiss and supporting memorandum contained certain errors and deleted pages. Accordingly the Respondent incorporates by reference and attaches hereto his Fourth Amendment Motion to Dismiss and Memorandum of Law in Support of Fourth Amended Motion to Dismiss. The Findings of the Florida Judicial Qualifications Commission should be rejected based on the Constitutional infirmities set forth therein.

* * *

I also invite the Court to read Exhibit 176 a letter to the Florida Supreme Court dated May 23, 1993, which includes the following observations of two Citrus County citizens:

- PAGE 23 -

Daniel R. & Marie L. Mason
4251 N. Little Dove Terrace
Hernando, FL 34442
May 23, 1993

Florida Supreme Court
Clerk's Office
500 S. Duval St.
Tallahassee, FL 32399-1927

Your Honors:

My wife Marie and myself are writing this letter to express our unquestionable support of County Judge Gary Graham of Citrus County Florida.

Both Marie and I are registered voters in Citrus County and we exercise this constitutional right on each and every election day. We, as registered voters, had the privilege and honor to vote for Judge Graham in his last election. We, like a clear majority of the registered voters in Citrus County, felt that Judge Graham would represent the best interests of us and the law abiding majority in Citrus County. We feel that he has done just that and he has administered justice in his court in a fair, practical, courteous and compassionate manner.

Now enter onto the scene the Judicial Qualifications Commission to investigate a series of frivolous complaints filed by the self-

aggrandizing elite of the body politic of Citrus County, in an attempt to achieve their self-serving interest and agenda.

Both Marie and I attended every hour of hearings that the JQC conducted during the eight days they spent in Citrus County. We listened attentively to all testimony presented and paid particular attention to the behavior and attentiveness of each of the Commission members, performing in the capacity of jurors in these hearings. Your Honors, if Marie or I were to behave in the jury box during a trial, as did a majority of this Commission during these hearings, we would have been summarily reprimanded and admonished by the presiding judge. And rightfully so.

Considering the endless chatter, smirking, snoozing, newspaper reading, checking one's pocket diary and general lack of attention, all of which took place while the hearings were in session, we find it next to impossible to understand how this Body could make an informed decision. Unless of course that decision was made before this Commission convened these hearings.

In the Commission's report to the Supreme Court on these hearings, they stated that Judge Graham was "arrogant", "arbitrary" and "capricious" in his administration of justice. If the Commission had not noted that these adjectives applied to Judge Graham, we would have readily drawn the conclusion that they were describing their own behavior during these hearings.

In conclusion, Judge Graham was elected by the voters of Citrus County. If we, the voters of Citrus County, are unhappy with the way Judge Graham is performing his duties, give us, the voters, our constitutional right to vote him out of office. Do not give his political opponents what they have been unable to achieve at the ballot box.

Respectfully yours,

s/ Daniel R. Mason
DANIEL R. MASON

s/ Marie L. Mason
MARIE L. MASON

CONCLUSION

Justice Ervin once wrote:

> The Commission has not been an instrument of oppression - it has not allowed itself to become a lever of any special group or interest to threaten the independence of Florida judges. The fear that "silk stocking" elements of the Bar and Bench through the medium of the Commission would ride herd upon highly independent judges has not materailized, with the one possible exception of Judge Kelly's case.
>
> State Ex Rel. Turner v. Earle

295 So 2d 609, 622 (Fla. 1974)

NEarly 20 years later that is no longer true. The "silk stocking" elements of the Bar and Bench in union with the liberal news media are now riding herd on our highly independent judges and with particular vengeance aginst Judge Grahm in Citrus County.

Brad King, the State Attorney for the Fifth Judicial Circuit, who pledged a "war" against Judge Graham, who kept "faggot memos" regarding him and who used state resources to collect political surveillance of Judge Graham's supporters understood the Commission's evolution into an instrument of oppression. That is

why he included with his complaint three baised hateful news editorials for the Commission's consideration.

- PAGE 61 -

Spike Fitzpatrick and Clark Stillwell both past presidents of the local bar were called to testify against him. Joseph Reiter past President of the Flroida Bar rode herd over the hearings as Chairman and trial boss.

That is what this case is all about. Do the lawyers and newspapers choose our judges or do the people?

> It is my understanding the Commission's practice is not to concern itself with trifles or "mares' nests" or unsubstantiated charges against a judge or to allow its authority to be used for the venting of spleen of disappointed litigants or special groups with an axe to grind.
>
> Turner v. Earle, supra at P 622

Talk about unsubstantiated charges. The Commission at one stage during these proceedings filed 26 unsubstantiated charges against Judge Graham including complaints that he would not let a pornography thief yell "I want a fu_ _ing attorney" through the open door of a packed courtroom and a "charge" that he had once stated in court "You can't separate morality form the law."

Furthermore, it has had the audacity to find him guilty of a mares' nest of trivial charges such as telling a woman that "You are the problem" when in open court she tells the jduge that her young adult son who is on probation for burglary

was just doing what every high school senior does on graduation night, when he painted giant penises on the school wallls replete with vulgarities like "leave her with a shaved beaver".

So too is he guilty of not allowing an attorney who acts and talks like a fool in court to also dress himself in a leather disco jacket.

The complaintants in this case are either:

1. silk stocking elements of the local bench and bar miffed at Judge Graham for having ousted their corrupt buddy former Judge Damron;

2. acknowledge bitter are vindictive political enemies, or

3. disgruntled litigants or their attorneys with an axe to grind.

All of them acknowledged a bias against him and some even professed their hatred of him.

Excluded from the evidence was 400 hours of videotape and over 250 witnesses, including police officers, jurors, victims,

attorneys, and citizens of Citrus County who would have rebutted the testimony of the handfrul of witnesses bent on abusing the legitimate authority of the Commission to obtain their personal vengeance against Judge Graham at the expense of our Democratic system of government.

This Honorable Court should keep in perspective the history of the Commission. It was created because Judge Kelley's political opponents and some fellow judges with an ax to grind could not get him impeached.

During the Senate trial counsel for Kelley articulated the concern we must all have for the independence of the judiciary:

> "Our primary responsibility is to Richard Kelly, but I think, in a larger sense, that we have a responsibility to the entire judiciary of the State of Florida. The proposition that is before you in these proceedings involves every judge, sitting in every court in the State of Florida, and that proposition is simply this:
>
> Must a judge render decisions on the basis of the influence of the lawyer involved? Must a judge curry favor with the Bar that practices before him, or risk impeachment, risk being discharged from

> his office, risk public disgrace and humiliation, or can he make his decisions independently, as an independent judiciary was intended to make them?
>
> Now, gentlemen, I think, also, in a larger
>
> - PAGE 64 -
>
> sense, every citizen of the State of Florida is a participant in these proceedings because, when the independence of the judiciary is diminished, it diminishes all of us. The very foundation of all our liberties and all our rights depends upon an independent judiciary, which is not subject to prejudice by lawyers, litigants, or from any other source."

Therein lies the double irony of this case.

First, Judge Graham is assailed not because he is unethical, dependent, or lacks integrity. He is being assailed because he has two [sic] much integrity to remain silent and ignore the misconduct of others as it affects the immediate due administration of justice in the Citrus County Court.

He won't let a State Attorney who has engaged in politics and favoritism in the disposition of criminal cases for politically prominent individuals, prosecute an admitted felony offense in misdemeanor court without asking why. He will not let defendants or their attorneys falsify the record without comment.

He will not allow the Chief Judge to abuse his administrative authority by removing him from a criminal case for having correctly ruled against the State of Florida and to do so with an Administrative Order which lies about the reason it was executed. He will not let attorneys play the fool in

leather disco jackets. He will not let a high ranking Deputy Sheriff "grab" his friend out of jail.

Furthermore, he is just too fiercely independent to allow the newspapers, the attorneys, his political opponents or the Commission to frighten him away from his duty to speak up against these outrages.

The Second irony is that the very Commission that is supposed to defend the independence and integrity of the judiciary has become an instrument of oppression to crush the very independence and integrity it was created to preserve.

The Commission, inflamed by the newspaper editorials sent to it by Mr. King, did not have the integrity or independence necessary to conduct a fair investigation of Judge Graham.

It jumped to the conclusion that he was guilty and proceeded to the eight day hearing which was a complete joke. Nothing that Judge Graham is falsely accused of singularly or cumulatively comes close to the rude arrogant, indifferent and wrongful treatment meted out by the Commission during the proceedings which were viewed by thousands of Citrus County citizens.

- PAGE 66 -

The Commission did not try Judge Graham. It disgraced itself. It proved just how correct the Bench and Bar Committee is in recommending a restructuring of the Commission.

The Commission has indeed become an "instrument of oppression". It has become a lever of special groups or interest which threaten the independence of the judiciary. It has become its practice to concern itself with trifles or mares' nests of unsubstantiated charges.[4/] It has become an institution which no longer provides proceedings which are "essentially fair".

The time has come to destroy it. The Bench and Bar Committee agrees. The facts of this case cry out for its destruction. The Judges of this state are becoming a timorous lot afraid

of their judicial shadows, fearful to exercise conscientiously their rights.

I urge this Court to stand up for Judge Graham. I urge it to stand up for the people of Citrus County. I urge it to stand up for the independence and integrity of the judiciary and the fundamental values of our nation.

4/Judge Bryson is currently under prosecution for receiving wake-up calls from a County Commissioner. Judge Perry is being prosecuted for holding defendants in contempt for driving away from the Courthouse after their licenses have been suspended.

I urge the Court to do what has never been done in the almost one quarter of a century that the Commission has existed. I ask it to reject the Findings of the Commission.

I also ask it to commend Judge Graham for his dedication and courage in reforming the Citrus County Court and standing up for its integrity over almost overwhelming opposition.

Finally, I urge the Court to rule the Commission and the Code it enforces unconstitutional and to work toward its replacement by a system which at a minimum provides respondent judges with the right to a civil trial before an unbiased jury of fellow citizens.

Respectfully submitted,

/s/_____
HONORABLE GARY GRAHAM
Post Office Box 519
Inverness, Florida 34451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, This 1st day of June 1993.

/s/_____

DOCUMENT 20

**Letter from Brad King to
Judicial Qualifications Commission,
with attached newspaper editorials**

A 658

OFFICE OF THE STATE ATTORNEY
Fifth Judicial Circuit of Florida
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

BRAD KING
State Attorney

19 N.W. Pine Avenue
Ocala, Florida 32670
Telephone (904) 622-0352

July 11, 1991

Executive Director
Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32399-6000

Dear Sir or Madam:

Reference my previous complaints, the enclosed clearly demonstrate the diminution of public confidence in the Citrus County Court.

Sincerely,

/S Brad King

BRADLEY KING
State Attorney

BK/aw
enc.

GARY G. GRAHAM NO. 91-415

EXHIBIT 98 EVIDENCE

ST. PETERSBURG FLORIDA TIMES
Citrus County Edition
Friday, July 5, 1991

EDITORIAL

OPINION

Judge has antagonized county

In many instances, to say a person marches to a different drummer is a compliment. It means the person is not afraid to go his own way if reason tells him it is the right course to take.

Unfortunately, in the case of County Judge Graham, marching to a different drummer only means he is out of step with good sense.

Graham's often excessive sentences, his rigid interpretations of the law and his hair-trigger mouth have put him at odds with just about everyone involved in the criminal justice system: lawyers, the state attorney, the chief circuit judge, the public defenders and now the Citrus County Sheriff.

One, by one, Graham unnecessarily has alienated these people, just at the time when the county needs him to work with them to solve the serious crisis of recurring crowded conditions at the county jail.

Instead, Graham continues to mete out long, inappropriate sentences for relatively minor offenses that even a tough sheriff like Charles Dean says don't do any good after a certain length of time. Graham repeatedly spurns the reasonable and professionally presented pleas of the sheriff to cooperate in reducing the number of inmates.

Dean, an experienced and insightful law enforcement officer, would not make such a request if he did not think there were people in his jail who would be okay on the outside. He is politically astute enough not to suggest letting dangerous people go. He, along with Jail Administrator Roberta Moffatt, observe inmates on a daily basis. They are in the best possible position to know whether an inmate could be trusted outside the jail. Graham should listen to them instead of continuing to send them more and more prisoners.

Now it has fallen to the acting chief circuit judge to do what Graham himself should do. Circuit Judge Victor J. Musleh, acting on behalf of the chief judge, has formed a committee to reduce Citrus' jail population. Members will gather each day that the two

jails go over their limit and will compile a list of inmates who might be released.

The move became imperative after several recent inmate fights and security threats at the jail that Dean said were a direct result of having too many people in too few cells.

First to go will be people who won't pose a danger to county residents, people who would probably be on the streets any way, were it not for Graham's eagerness to put everyone behind bars, no matter how minor the offense.

Others will be considered according to their offense, their ties to the community and their criminal record.

Once the list is compiled, Circuit Judge William Edwards will decide who stays and who goes.

Graham was invited to be on the committee, but, in his usual petulant way, refused to serve. Apparently, he would rather spend his time in court sentencing still more people to ridiculously long, non-productive jail terms and holing away in his office refusing to talk with the media, and by extension the public.

Citrus County taxpayers should be outraged. The meter is ticking, and the costs are soaring.

CITRUS COUNTY CHRONICLE
July 7, 1991
Editorial

Situation must be diffused

GRAHAM SHOULD BE INVESTIGATED BY JQC

Gary Graham enjoys the position of being a martyr. The controversial county judge has made a political career out of positioning himself against others. He has successfully convinced voters that he is protecting them against the evils of society.

But our "television judge" has done more than just position himself against those accused of committing crimes. He has made an art out of confrontations with the state attorney, the sheriff, the jail administrator, the chief judge, defense attorneys and the press.

Could it be that only Gary Graham's vision of the criminal justice system is correct? We think not.

Graham has always managed to stay in the headlines by way of his outrageous sentences of those accused of traffic violations or misdemeanors. We don't have to go into the "bull" case or talk about snakes or pickup trucks.

Graham's inability to work with those other professionals in the criminal justice and judicial system has created institutional

problems that are costing both the taxpayers of this county real dollars and the county court its respectability.

Earlier this week the chief judge created a committee to review the jail over-crowding conditions in Inverness. The sheriff and jail administrator had a crisis on their hands when inmates protesting overcrowding flooded the jail toilets and created an electrical short that opened all the cell doors at once. Obviously, there could have been hostage situations or escape attempts. Fortunately, that did not happen. But the potential for disaster was there. The sheriff and chief judge agreed quick action was needed.

The chief judge ordered that a committee made up of Judge Graham, State Attorney Brad King, Public Defender Howard Babb and Jail Administrator Capt. Robin Moffatt review the particulars on each person in the county jail and provide Circuit Judge William F. Edwards with a list of pretrial inmates who could be released without creating a threat to the community.

The chief judge felt Graham needed to be on the committee because he was responsible for most of the inmates who would be considered for release. But Judge Graham replied that he was too busy to meet. Luckily, the chief judge recognized that Graham

again permitted his personal dislike of the sheriff to get in way of doing what was right. The chief judge removed Graham from the committee and 22 inmates deemed nondangerous to the public were reviewed and quickly released.

It was just the week before that Graham permitted his feud with State Attorney Brad King to erupt again. Graham accused King of unethical behavior and of violating ex parte laws by contacting the chief circuit judge in an effort to have Graham removed from an important murder trial.

But Graham never bothered to get the facts before he made his accusations. The chief circuit judge later said that King had never contacted him and that Graham's temporary appointment as a circuit court judge was ended when a qualified circuit court judge became available.

This was the same case where graham, filling in for injured Circuit Court Judge John Thurman, told lawyers that they were forbidden to tell members of the press about an upcoming hearing because he didn't want any reporters present.

The state's Judicial Qualifications Commission has the authority to examine Graham's performance as a jurist. And they

have the power to recommend to the Supreme Court that corrective action be taken.

We feel the JQC needs to immediately review the Graham situation. Graham packs the jails with traffic offenders. He routinely raises bail so that those accused of crimes must stay behind bars for lengthy periods of time awaiting disposition of their misdemeanor cases.

He refuses to take responsibility for his practices and wraps himself in a cloak of "I am protecting society" without regard to the realities of the dangerous situation he is helping to create.

He constantly feuds with the sheriff and has no regard for the beleaguered jail administration, the state attorney and other judges. And he makes unfounded accusations about his critics.

It would be a healthy step for the Judicial Qualifications Commission, an outside organization, to step in and diffuse the situation.

DOCUMENT 21

Notice of Formal Charges

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

No. 91-415

_____/

NOTICE OF FORMAL CHARGES

TO: The Honorable Gary G. Graham
Citrus County Court Judge
Room 215, Old Citrus County Courthouse
Inverness, FL 32650-4802

YOU ARE HEREBY ADVISED that the Florida Judicial Qualifications Commission, by a vote of at least seven members of the said Commission, at its meeting in Tampa, Florida, on July 31, 1992, has determined, pursuant to Rules 2(b)(2) and 7 of the Florida Judicial Qualifications Commission Rules, that there is probably cause to initiate formal charges against you.

Formal proceedings are hereby instituted to inquire into the following charges against you:

1. You have repeatedly used your position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others, without reasonable

factual basis or due regard for their personal and professional reputations. This allegation includes, but may

not be limited to, the following:

A. On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

B. In an article published September 15, 1988, in the St. Petersburg Times, several weeks before the election for the State Attorney, you are quoted as saying "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers." According to the report, you refused to discuss specific cases.

C. On February 20, 1991, in open court and during a hearing in State v. Pfeister, Case No. 91-87-TC, you accused the Office of the State Attorney of "routinely regulating" DUI offenses of lawyers and doctors to reckless driving for "no apparent reason."

D. On February 20, 1991, in open court and during a hearing in State v. Pfeister, Case No. 91-87-TC, you accused State Attorney Brad King of favoritism while he was an assistant state attorney in his handling of State vs. Ortolano.

E. On February 20, 1991, in open court and during a hearing in State v.Pfeister, Case No. 91-87-TC, you repeatedly demanded that assistant state attorney Richard D. Ridgeway provide an explanation regarding the exercise of discretion by the Office of the State Attorney in filing a DUI case as a misdemeanor rather than a felony and, in doing so, stated that the explanation was required so that you could ascertain that politics and favoritism were not involved in the charging decision of the State Attorney.

F. On June 10, 1991, in open court and on the public record, you accused State Attorney King, and, by implication, Chief Judge William T. Swigert, of improper ex parte communications which you claimed resulted in the revocation of your appointment as acting Citrus County Circuit Court Judge. In the same discourse, you accused State Attorney King of improperly seeking your

removal as acting Citrus County Circuit Court Judge because he was displeased with certain of your recent legal decisions.

G. On September 17, 1991, in open court and during a hearing in State v. Webb, Case No., 91-8161-TC, you publicly accused Captain Roberta Moffatt and Investigator Larry Burkhalter of the Citrus County Sheriff's Office with "trading official actions for other beneficial acts by the defendant." You also stated on the record and in open court:

> so all the people in the Citrus County justice system that think they can trade favors around and release prisoners from jail because of mutual favors and friendships, I want them to know what happens when you get caught in the Citrus County Court. So from now on the best thing people can do for their friends who get arrested is not to wrongfully intervene in their case. Okay? So you tell your friends and that's what you got for trading favors to get out of the Citrus County Jail.

H. On March 10, 1992, in open court and during a hearing in State v. Riggs, Case No. 90-5139-MM, you accused the defendant and the Office of the Public Defender with deliberately falsifying a transcript used in the defendant's appeal.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF

THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

2. On various occasions you have exceeded and abused the power of your office by imposing improper sentences and improper use of your contempt powers. This allegation includes, but may not be limited to, the following:

A. In State v. Rouse, Case No.92-1011-MM, you ordered an unrepresented defendant to participate in two "buys" and two "sells" of drugs as a condition of his sentence of 20 days imprisonment and two years probation without conferring with law enforcement to consider the suitability or desirability of the defendant's cooperation. Your sentence was pronounced in open court and in the presence of other jail inmates.

B. In State v. Shirling, Case No. 91-10026-MM, you ordered an unrepresented defendant to "assist the State Attorneys Office in catching a drug dealer." You did not confer with the State Attorney to consider the suitability or desirability of the

defendant's cooperation. Your sentence was pronounced in open court.

C. In State v. Musser, Case No. 91-1258-MM, you rejected a negotiated plea agreement in a domestic violence case which had been approved by the victim and refused to grant the defendant probation unless the victim and the defendant either married or lived separately. In doing so, you are reported to have stated that "you cannot separate morality from the law. There is just no way to do it."

D. In State v. Stanage, Case No. 89-3286-TC, as a part of your sentence, you suspended the driver's license of the defendant who was a passenger in an automobile with an open container of alcohol. When the defendant questioned the fairness of your decision, you asked if he wanted the Court to reconsider its sentence. When he replied in the affirmative, you added an additional three months to the suspension. You thereafter inquired if the defendant

wanted you to reconsider his sentence again. When he responded, "yes sir", you increased the suspension by another three months.

E. In State v. Floyd, Case No. 91-9012-T, you suspended Mr. Floyd's driver's license for one year and prohibiting him from obtaining a hardship license for running a stop sign.

F. In *State v. Cecil*, Case No. 91-4569-MM, as a part of your sentence, you ordered the defendant, a fisherman, to "get a real job, a paycheck job."

G. In State v. Thorne, Case No. 91-11344-MM, as a part of your sentence, you ordered "if wife goes out and stays out and comes home drunk and pushes him around and asks him to punch her in the head - he is not to punch her in the head."

H. In State v. Obremski, Case No. 91-02037-TC, as a part of your sentence, you ordered the defendant to purchase a bicycle for transportation.

I. In State v. Wilcox, Case No. 90-11858-MM, as part of your sentence, you ordered that the defendant purchase two bicycles and "cycle kid to school" if she missed the bus.

J. On or about October 18, 1991, you found William Fite guilty of contempt and sentenced him to six months incarceration for saying "you know how this county works. What Judge Graham says goes. What everybody else says, to hell with them." This

statement was made in open court and was directed to the Court in an official proceeding. After Mr. Fite was taken from the courtroom and while he was in the hallway of the courthouse, he made a comment that he "wanted a f__king lawyer to help." Thereafter, you had Mr. Fite returned to the courtroom, found him in contempt and sentenced him to another six months incarceration.

- PAGE 7 -

K. You have repeatedly made unreasonable and improper demands of the Sheriff of Citrus County regarding security in your courtroom, and, on March 15, 1992, you summoned a supervisor from the Sheriff's Office to your courtroom. When Deputy Sheriff Amann arrived, you gave her instructions regarding future security arrangements in your court and threatened to hold her in contempt if she did not comply with your instructions.

The aforementioned conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should

participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

- PAGE 8 -

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

3. On various occasions you have acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in your court. This allegation includes, but may not be limited to, the following:

A. On November 21, 1991, Ms. Patricia Myers, a local attorney, appeared before you in Case No. 91-922-SP with her client. You would not permit her to make an opening statement or otherwise address the Court. At the close of the case, in open court and in the presence of her client, you stated that she should be honest and advise her clients that they do not need an attorney in small claims court.

B. On January 11, 1991, Mr. James Sproles appeared in your court as a plaintiff in a civil action. After it was determined that Mr. Sproles had been arrested for a violation of probation, you called him a convicted felon in the presence of his family, stated that you would not consider his testimony and dismissed his case.

C. On April 17, 1990, in open court, you accused a local attorney, Charles Horne, of abandoning his client, repeatedly inquired of Mr. Horne if he was aware of his ethical obligations as an attorney and berated Mr. Horne for violation of his oath as an attorney.

D. On October 23, 1989, in State v.Nemeth, Case No. 89-04546-TC, after sentencing the defendant, you implied that the defendant did not need counsel in this case and

made repeated inquiries of the defendant, over the objections of counsel, regarding the financial arrangements of the representation.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

> A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others which whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.
>
> - PAGE 10 -

4. On various occasions you have conducted yourself in a manner which impugns the public perception of the integrity and impartiality of the judiciary. This allegation includes, but may not be limited to,the following:

A. It has been reported in the local media, particularly the September 15, 1988 edition of the Citrus County Chronicle, that you have stated that you will not accept a negotiated plea in a criminal case for any defendant whose attorney has criticized your methods in accepting such pleas and that you have advised attorneys of this fact in the course of hearings in your court.

B. It has been reported in the local media, including the St. Petersburg Times, Tampa Tribune and Citrus County Chronicle, that on or about May 12, 1989, while you were apparently the only

judge available in Citrus County, you declined to enter a restraining order in a domestic violence case, notwithstanding the fact that you secured jurisdiction to enter a similar order in a different case the previous day. When questioned by the media regarding your failure to seek proper jurisdiction to enter the order, you were reported as stating that the attorney seeking the order had repeatedly criticized you and that you were not going to do him any favors.

C. In State v. Webb, Case No. 91-8161-TC, you admittedly sentenced the defendant to an excessive period of incarceration and refused to mitigate the defendant's sentence based upon your perception that the defendant had been improperly released on his own recognizance from the Citrus County Jail.

D. In State v. Collins, Case No. 92-72-CF, Judge Thurman, a circuit court judge, and the trial judge, endorsed the amount of the bond on a capias at $5,000 and specifically noted

that the bond should not be changed. However, on February 18, 1992, at the first appearance, you increased the bond to $25,000 without the permission of Judge Thurman.

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities.

> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others which whom he deals in his official capacity and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

5. You have closed and attempted to close public proceedings and in doing so you instructed and threatened others to keep the proceedings secret.

A. In July of 1990, in State v.Downing, Case No. 90-5628-MM, you instructed the attorneys in the case to attend a conference relating to restitution at the Salvation Army Probation Office. You would not permit a newspaper reporter admission to the conference and when at least one of the attorneys present stated that he believed that the reporter should be permitted to attend, you canceled the conference and advised the reporter that a conference would not be held. A short time later the same day, you telephoned the attorneys and instructed them to report to your chambers. The reporter was not present and the conference relating to restitution continued in his absence.

B. In June of 1991, you advised certain courthouse personnel and the attorneys in State v. Barrett, Case No. 90-490-CF, of your intention to conduct a private conference without the presence of

the defendant and the public. You instructed and threatened those present to keep the conference secret and gave specific instructions not to advise any reporters of the

conference. The conference did not occur because your appointment as circuit court judge was revoked by the Chief Judge.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

> A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

> (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor or fear of criticism.

6. You have engaged in ex parte communications with attorneys and parties.

A. In June of 1991, you engaged in at least one ex parte conversation with an Assistant Public Defendant regarding State v. Barrett.

B. In Case No. 89-385-SP, after announcing judgment for the plaintiff in the amount of $463.36 and costs, the defendant and his counsel left the courtroom. In their absence, you advised the plaintiff that she could keep the alleged defective pump for which you had just awarded her the purchase price.

The aforesaid conduct, if true, is in violation of the following Canons of the Code of Judicial Conduct:

Canon 1:

A JUDGE SHOULD UPHOLD THE INTEGRITY AND THE INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2:

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Canon 3:

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY.

A. Adjudicative Responsibilities

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applica-

ble to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Your conduct, as described above, if true, could impair the confidence of the citizens of the state of Florida in the integrity of the judicial system and could constitute a violation of Canons 1,2.A,2.B, 3.A(1),3.A(3) and 3.A(4) of the Code of Judicial Conduct.

WHEREFORE, your conduct as set forth in the above allegations could constitute conduct unbecoming a member of the judiciary and could demonstrate your present unfitness to hold the office of judge and/or could warrant discipline.

You are advised of the right to file a written answer to the above charges made against you within twenty (20) days of service of this Notice upon you pursuant to the provisions of

Rule 7(b) of the Florida Judicial Qualifications Commission Rules.

DATED this 7th day of August, 1992.

J. Klein Wigginton, Chairman
Florida Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581

AND

Roy T. Rhodes, General Counsel
Florida Judicial Qualifications Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581
Fla. Bar #0066222

/s Roy T. Rhodes
Roy T. Rhodes

Terrance A. Bostic, Special Counsel
Fla. Bar #304336
Alicia J. Schumacher, Special Counsel
Fla. Bar #864330
BUSH ROSS GARDNER WARREN & RUDY, P.A.
220 South Franklin Street
Tampa, FL 33602
(813) 224-9255

/s T. A. Bostic
Terrance A. Bostic

DOCUMENT 22

Amendment to Notice of Formal Charges

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE:
NO. 91-415
CASE NO. 80,273

_____/

AMENDMENT TO NOTICE OF FORMAL CHARGES

TO: THE HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
ROOM 215, OLD CITRUS COUNTY COURTHOUSE
INVERNESS, FLORIDA 32650-4802

YOU ARE HEREBY ADVISED that the Florida Judicial Qualifications Commission, by a vote of at least seven members of the said Commission, at its meeting in West Palm Beach, Florida, on October 22, 1992, has determined pursuant to Rules 2(b)(2) and 7 of the Florida Judicial Qualifications Commission Rules that there is probable cause to amend the Notice of Formal Charges previously filed against you.

The Notice of Formal Charges filed in the case on August 7, 1992, is hereby amended to include the following:

2. On various occasions you have exceeded and abused the power of your office by imposing improper sentences and

improper use of your contempt powers. This allegation includes, but may not be limited to, the following:

L. In *State v. Segrest*, Case No. 87-235-CF, you found Segrest, a defendant in a criminal case, in contempt of court and ordered him imprisoned for 60 days for saying the word "bull" during the testimony of a witness in his trial.

M. In *State v. Oldag*, Case No. 88-09796-TC, as a part of your sentence, you required that Oldag perform 40 hours of community service for the State Attorney's Office and further stated that you would "suspend 10 hours community service if defendant washes [the] state attorney's car with the T-shirt he has on today."

N. In *State v. Stephens*, Case No. 89-6019-CC, you found attorney Harold Stephens in contempt of court and sentenced him to six months probation, a fine of $250 and forty hours of community service, for stating the world "bull" to an attorney while in the courtroom.

O. In *State V. Barth*, Case No. 89-10686-MM, as a part of your sentence, you ordered that Barth either give up her job as a

shrimper or spend 10 days in jail and in doing so stated "I know from my experience on the bench the type of people you associate with shrimping. I am trying to get her out of a particular life style."

P. In *State v. Douglas*, Case No. 90-8778-MM, as a part of your sentence, you entered an order prohibiting Douglas from having any contact with his children.

3. On various occasions you have acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in your court. This allegation includes, but may not be limited to, the following:

E. On March 27, 1989, you exhibited rude, improper and inappropriate behavior in open court and in your chambers toward attorney Chip Harp by berating Harp because you did not believe he was appropriately dressed for court.

F. In *State v. Dobbs*, Case No. 92-6208-MM, you exhibited rude, improper, and inappropriate behavior in open court when you addressed the defendant's mother by stating "You know what his problem is, his problem is you. It is not me. It is you. I can tell that by the way you are defending him.

4. On various occasions you have conducted yourself in a manner which impugns the public perception of the integrity and impartiality of the judiciary. This allegation includes, but may not be limited to, the following:

E. In *State v. Jurick*, Case No. 89-10809, you revoked the driver's license of Bernard Jurick. Several months later, while in the Gathering Restaurant, located in Inverness, Florida, you overheard a conversation between Mrs. Jurick and another individual in which Mrs. Jurick mentioned that her husband had obtained a hardship driver's license. You suspected that the conversation was about Bernard Jurick, however, you did not know Mrs. Jurick and could not remember the defendant's name. You asked Mrs. Jurick to identify herself and when she declined to identify herself, you stated that you would "make it harder" on her husband when you determined his identity.

F. In *State v. Parker*, Case No. 90-4111-MM, the Assistant State Attorney assigned to the case was out of the courtroom when the case was called for disposition. You proceeded with the disposition of the case and did not consider the issue of restitution to the

victims. Later, the assistant state attorney assigned to the case advised you that restitution had been overlooked, that the victims were seeking restitution and requested that the court schedule a restitution hearing. You refused and stated "when we have court, the State Attorney is to be there."

G. In *State v. Hodge*, Case No. 90-4451-MM, the issue of restitution was not considered in the disposition of the case. When the State Attorney's Office filed a timely and otherwise proper motion to modify the sentence to include restitution, you denied the motion and berated the State Attorney's Office for being unprofessional.

H. Beginning in January, 1992, you sentenced individuals to imprisonment in the Citrus County Jail and granted them the privilege of leaving the confines of the jail to attend work or school pursuant to a work release program, knowing that the Citrus County Board of Commissioners had not established and the Sheriff of Citrus County had not consented to a work release program as required by the applicable Florida Statutes. The Sheriff of Citrus County found it necessary to resort to litigation as a result of your actions.

I. In *State v. Fitzgerald*, Case No. 92-07873-TC, you threatened to file a bar grievance against Assistant Public Defender Angela Miller if she filed a motion to disqualify you as presiding judge in the case. After she was removed due to a conflict of interest, you directed Miller and Assistant State Attorney Elizabeth Osmond to advise defendant's new counsel, Barbara Gurrola, that you would file a bar grievance against her if she filed a motion to disqualify you as presiding judge in the case. When Osmond and Miller declined to comply with your directions, you instructed the defendant to advise his new attorney of your statements.

J. You have used the power and prestige of your judicial office and the resources of the State of Florida to conduct a private, unofficial "investigation" into favoritism and corruption in the Citrus County courts. In furtherance of your investigation, you have requested that members of the public with information regarding local corruption contact you at your judicial office. Further, in conducting your investigation, you have utilized employees of the State of Florida, especially employees of the Office of the Clerk of Citrus County, to obtain driving records, vehicle registrations, various case files and other information. You

have not paid for this information or these services and you directed that the state employees keep your requests confidential from there supervisors.

6. You have engaged in *ex parte* communications with attorneys and parties. This allegation includes, but may not be limited to, the following:

C. In *State v. Mullins*, Case No. 89-00022, you increased Mullins' bail from $500 to $5,000 in the presence of his attorney, Chip Harp. After Harp left the courtroom, you continued the proceeding in the presence of the assistant state attorney and increased his bail from $5,000 to $10,000.

Your conduct, as described above, if true, could impair the confidence of the citizens of the state of Florida in the integrity of the judicial system and could constitute a violation of Canons 1,2.A, 3.A(3) and 3.A(4) of the Code of Judicial Conduct.

Your conduct, as described above, if true, could constitute conduct unbecoming a member of the judiciary and could demonstrate your present unfitness to hold the office of judge and/or could warrant discipline.

You are advised of the right to file a written answer to the above charges made against you within twenty (20) days of service of this Amendment upon you pursuant to the provisions of rule 7(b) of the Florida Judicial Qualifications Commission Rules.

DATED this 26th day of October, 1992.

J. Klein Wigginton, Chairman
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581

AND

Roy T. Rhodes, General Counsel
Florida Judicial Qualifications
Commission
Room 102, The Historic Capitol
Tallahassee, FL 32301
(904) 488-1581
Fla. Bar #0066222

s/ Roy T. Rhodes
Roy T. Rhodes

Terrance A. Bostic, Special Counsel
Fla. Bar #304336]
Alicia J. Schumacher, Special Counsel
Fla. Bar #864330
BUSH ROSS GARDNER WARREN & RUDY, P.A.
220 South Franklin Street
Tampa, FL 33602
(813) 224-9255

s/ T. A. Bostic
Terrance A. Bostic

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Amendment to Notice of Formal Charges has been furnished, by U.S. Mail, Certified no. P 731 068 760, to the Honorable Gary G. Graham, Room 215, Citrus County Courthouse, Inverness, Florida 32650-4802 on this 26th day of October, 1992.

s/ Roy T. Rhodes

DOCUMENT 23

Excerpts from Transcripts

of the Proceedings

- PAGE 408 -

JUDGE GRAHAM: Under Rule 26--

JUDGE DAMRON: -- put up with.

JUDGE GRAHAM: -- I'm making and filing this -- my affidavit of disqualification for Commissioners Barnes, Kan, Tate, Burnstein, Mahon, Clark and Reiter, all supported by the affidavits of -- one, two, three, four, five, six -- seven affidavits of reputable citizens of this county.

THE CHAIRMAN: May I see the affidavits?

JUDGE GRAHAM: And furthermore, would proffer their live testimony in court today. They're present here to support their affidavits and the motion.

THE CHAIRMAN: Have you been served a copy of these, Mr. --

MR. BOSTIC: No, I have not. I have not seen them before.

THE CHAIRMAN: Mr. Bostic, you can have a seat for a second while I go ahead and read this for a second.

- PAGE 409 -

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: The affidavit has been filed by Judge Graham indicating that Mr. Tate was reading the newspaper; that Judge Burnstein and Nancy were talking; that Mr. --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Do not interrupt me, Judge, please -- that Mr. Clark was reading the newspaper during the proceedings and appeared to be sleeping at one -- at one -- and it's not completed. Number four, Commissioner Burnstein was reading the comics in the newspaper. Number five, Mr. Kaney was making nonverbal gestures at Chairman Reiter. Six, that Sybil Barnes appeared to be sleeping during the proceedings. Finally -- and he says finally, "These individuals were ready, willing, and able to testify before the Commission," and he has affidavits from a Helen Zebby, Z-e-b-b-y, George -- and I cannot read the writing --

MR. LIZANETZ: Lizanetz.

THE CHAIRMAN: -- L-i-z-a-n-e-t-z, Mr. Joe Bodi, B-o-d-i, and the last one is Alex I-l-n-y-z-k-y.

JUDGE GRAHAM: And Mr. Mason.

THE CHAIRMAN: All right. The Commission will not take testimony. This is outside the rules. The Commission, according to Rule 26, has already been challenged once in toto and in person, and the affidavit filed will be considered by a vote of seven or more of the Commissioners voting in reference to whether you want to have an excusal of any of these individuals.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned.

* * *

- PAGE 483 -

JUDGE KANEY: Can we take a break? We've used up the 20 minutes that --

THE CHAIRMAN: All right. Judge Graham, you had asked time to get something to eat. How much time -- I don't want to give an hour. Would 25, 30 minutes suffice?

JUDGE GRAHAM: In 25 or 30 minutes I couldn't even get up to McDonald's and back.

THE CHAIRMAN: Judge, there's restaurants right across the street.

JUDGE GRAHAM: I couldn't walk to the townhouse and back in 20 minutes. I need an hour's lunch just like any other individual.

THE CHAIRMAN: I will not give you an hour. I will give --

COMMISSIONER GILLMAN: What happened at 12:15?

THE CHAIRMAN: Where were you from 12:15 until you reconvened?

JUDGE GRAHAM: What are you talking about?

THE CHAIRMAN: I thought that Judge Yawn had broke until about 1 o'clock or something.

JUDGE GRAHAM: I was busy trying to get a hold of Mr. McKinney and Mr. White because

you folks were implying that you were going to put me in jail.

THE CHAIRMAN: I will give you 20 minutes of break. We are now breaking, and we will be back here at five -- actually, 22 minutes. We will be here at five minutes after three.

* * *

- PAGE 528 -

JUDGE GRAHAM: I've lost that document that she just marked.

THE CHAIRMAN: It is not in the clerk's

- PAGE 529 -

hands?

JUDGE GRAHAM: She was reading it, and that's the reason I couldn't find it. Let the record reflect that the Commission is laughing about that. Why it's funny that I couldn't find it --

THE CHAIRMAN: The Commission is not laughing. Please proceed.

* * *

- PAGE 623 -

JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue.

* * *

- PAGE 706 -

JUDGE GRAHAM: May I ask permission to note for the record that Ms. Barnes was sleeping again? And I tried to get the television to get her, but by the time I got over there, she woke up.

THE CHAIRMAN: All right. I am not granting you that permission. You already put that on the record.

* * *

- PAGE 708 -

JUDGE GRAHAM: May I approach the bench sidebar?

THE CHAIRMAN: No sidebar. What do you want?

JUDGE GRAHAM: I want to ask permission to have my assistant stand ready with a camera and take a picture of Ms. Barnes the next time she goes to sleep.

THE CHAIRMAN: You will not disrupt this court; and that statement is incorrect, and you will continue. And no one will be brought forward in here. Ask your questions.

JUDGE GRAHAM: Is that permission denied?

THE CHAIRMAN: Permission for anyone to come forward and take photographs is denied.

JUDGE GRAHAM: Permission for her to take the photographs --

THE CHAIRMAN: Anyone. Do you understand?

JUDGE GRAHAM: Not coming forward; to just take the picture while she is sitting there.

- PAGE 709 -

THE CHAIRMAN: There will be no pictures taken in this courtroom of any of the Commissioners by your personnel on this side of the bench -- I'm sorry, this side of the rail.

JUDGE GRAHAM:. Permission for Ms. Baarsma --

THE CHAIRMAN: I am not going to argue the issue anymore. Please proceed. You are intentionally delaying this trial, and you are pushing my patience, Judge Graham. This is conduct you would not allow in your own courtroom, and I'm not going to allow it in this Commission hearing. So stop it and proceed with the case.

JUDGE GRAHAM: I would like to make a motion for a mistrial. I think you have --

THE CHAIRMAN: The motion for a mistrial is noted, denied. Please proceed.

JUDGE GRAHAM: May I ask permission to make a statement for the record on that?

THE CHAIRMAN: All right. I am holding you in contempt for delay of this case. I am going to suggest to you that you have continuously disregarded the instructions of the Chair; you have intentionally delayed this

trial; you have made demeaning remarks to the Chair; you have not been paying attention to my instructions for orderly presentation of this evidence.

I am recommending to the sitting Judge Yawn to come here and show reason to you why you should not be held in criminal contempt. I am going to ask for incarceration of you as soon as Judge Yawn can come here. We will take that matter up as soon as he can get here.

Now, you will proceed. And I suggest strongly that you get your counsel here to represent you.

Mr. Rhodes, come forward.

(Discussion off the record.)

THE CHAIRMAN: The contempt occurred here. The request of General Counsel is that I was talking about civil contempt. You have done it in the presence of the Commission, in my direct presence; and I am going to ask for activity -- I mean, ask for the judge to so hold you in contempt.

Now, please proceed. That is one matter we will take up as soon as the judge gets here.

JUDGE GRAHAM: I'd ask permission for a

recess, because you've unnerved me, and I need a few moments to collect my thoughts.

THE CHAIRMAN: You will continue, please. If you are finished with your cross-examination, we will call the next witness.

JUDGE GRAHAM: I would like permission to make a motion for a mistrial.

THE CHAIRMAN: Make your motion.

JUDGE GRAHAM: I would move for a mistrial on this. These are the trier of fact, and you have made these statements threatening to put me in jail -- saying that you're going to ask to put me in jail. And at this point, it would be entirely unreasonable to expect these Commissioners to listen to my testimony or the testimony of my witnesses and believe them when you've made me out to be --

THE CHAIRMAN: Your objection is noted and denied. Please continue, Judge.

JUDGE GRAHAM: May I have permission to finish it?

THE CHAIRMAN: No. You have completed your objection. Please continue. You are not going to delay this trial anymore.

* * *

- PAGE 1492 -

JUDGE GRAHAM: I would like to clarify for the record -- I have received a transcript of our previous hearing proceedings, and I would like to clarify for the record that the man that grabbed me during the proceedings was Mr. Roy Rhodes, General Counsel for the JQC.

MR. RHODES: I did what?

JUDGE GRAHAM: Grabbed my arm, right

- PAGE 1493 -

here.

THE CHAIRMAN: All right. What else do you have to present?

JUDGE GRAHAM: Any objections to that? Anyone?

THE CHAIRMAN: Please continue.

* * *

- PAGE 1999 -

JUDGE GRAHAM: Excuse me. He interrupted the witness, and then -- Mr. Bostic and the Commission is doing this to him. When they start hearing an answer they don't like, they cut him off. Please let him answer.

THE CHAIRMAN: The objection is overruled. The Chair does not interpret that it was -- that his question was interrupted. Sir, if you feel that you need to complete your question, just let me know. I mean, if you --

THE WITNESS: Okay.

* * *

- PAGE 2004 -

JUDGE GRAHAM: This Commissioner is becoming an advocate for Mr. Bostic at this point, and it's clear. He doesn't like his testimony --

THE CHAIRMAN: You've stated --

JUDGE GRAHAM: -- And he's trying to impeach this witness.

THE CHAIRMAN: You've stated your objection. The objection is overruled. What was your answer to the question?

THE WITNESS: Well, can you please repeat the question?

* * *

- PAGE 2058 -

I would make a note for the record -- permission -- that Ms. Burnstein is looking at some type of calendar.

THE CHAIRMAN: Judge, would you please finish your proffer?

JUDGE GRAHAM: I would respectfully request --

THE CHAIRMAN: Are you finished with the proffer? We are going to conclude it if you don't continue with your proffer.

JUDGE GRAHAM: Okay. I will continue under protest. And that she's continuing to look at it.

THE CHAIRMAN: Judge, please do not be debating the issue with me. Finish your proffer.

* * *

- PAGE 2069 -

I object to the Commissioners whispering and talking, Burnstein and --

THE CHAIRMAN: Judge, please continue. I have asked you not to interrupt your proceedings in the presentation of your evidence. Please continue.

JUDGE GRAHAM: Okay. May I request the Chair, then, to request the Commissioners to stop reading books and talking and whispering when I am trying to present my evidence to them? Could you do that?

THE CHAIRMAN: The Commission is paying attention to you. I am not going to instruct them to do anything. They are well qualified to listen to the evidence and do what they have to do while sitting as Commissioners. So please proceed, Judge.

* * *

- PAGE 2225 -

BY JUDGE GRAHAM:

Q. Sir, as a result of your --

JUDGE GRAHAM: I would like the record to

- PAGE 2226 -

reflect that Ms. Burnstein is laughing at that.

THE CHAIRMAN: Judge, please do not be making observations in the record. If you want permission to do so, address it to the Chair, please.

JUDGE GRAHAM: I would address that to the Chair. I object, and I would move to disqualify Ms. Burnstein. She's been reading, and now she's giggling at the testimony, and I have no confidence whatsoever that she will be a fair and impartial trier of the facts.

THE CHAIRMAN: Your objection is overruled. Please proceed.

* * *

- PAGE 2319 -

BY JUDGE GRAHAM:

Q. Mr. Cury, are the character traits that you have shared with the Commission the type of traits that you believe are ones that are susceptible to great change?

MR. BOSTIC: Objection. Goes beyond the scope.

THE CHAIRMAN: Unfortunately I didn't hear the question. Would you repeat it, Judge?

BY JUDGE GRAHAM:

Q. Does a leopard change his spots, Mr. Cury?

THE CHAIRMAN: He can answer that.

COMMISSIONER Clark: Perhaps.

- PAGE 2320 -

A. Let me -- the gentleman who spoke as a member of the group of decision makers -- I would say yes, perhaps; however, let me analogize this way.

* * *

- PAGE 1622 -

A. I have several uncles.

Q. Is Charles Allen your uncle?

A. Yes, sir.

Q. Was he the property appraiser at that time?

A. Yes, sir.

JUDGE GRAHAM: No further questions.

THE CHAIRMAN: Mr. Bostic?

MR. BOSTIC: No questions.

* * *

- PAGE 1620 -

THE CHAIRMAN: All right. Is that correct, Mr. Bostic? Do you agree to that?

MR. BOSTIC: I agree to that, yes.

THE CHAIRMAN: All right. Next witness. So noted. The Commission knows that that is now evidence.

JUDGE GRAHAM: Horace "Bud" Allen.

THE CHAIRMAN: Judge, while we're waiting on this one-- which count is this? Is this on page 2?

JUDGE GRAHAM: This is as to the fact that doctors, lawyers, and influential --

THE CHAIRMAN: All right. That's on page 2, Item B, then. Right.

*****

HORACE "BUD" ALLEN, JR.,

being first duly sworn to testify the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY JUDGE GRAHAM:

Q. Good morning, sir.

A. Good morning -- or afternoon.

Q. Would you state your name for the Commission, please?

- PAGE 1621 -

A. Horace "Bud" Allen, Jr.

Q. Sir, sometime back in 1984, were you adjudicated guilty of driving under the influence by Judge -- then Judge Damron?

A. Not in '84.

Q. What year was it?

A. And it wasn't by Judge Damron. It was by Judge Hill in '85.

Q. Weren't you adjudicated and then it was dismissed and then you were readjudicated?

A. I don't remember that, no, sir. I know I was --

Q. And so if the Commission -- if the Florida Supreme Court's written opinion to that effect says that, they would be wrong?

A. I don't recollect. I did hire Bill Eppy to appeal one.

Q. Didn't you have a DUI conviction dismissed by Judge Damron which later had to be overturned because it was done without the State knowing about it? Yes or no?

A. I can't answer that honestly. I don't know what the outcome of it was, to be honest with you.

Q. And who is your uncle?

* * *

- PAGE 1473 -

PROCEEDINGS

THE CHAIRMAN: Good morning, everyone. The Florida Judicial Qualifications Commission is back in session on this matter in reference to Judge Graham's Supreme Court case, No. 80,273. We are starting today, and we are going to complete this hearing by Friday.

* * *

- PAGE 2684 -

JUDGE GRAHAM: Well, see, here's the trouble with that ruling. Okay? All right? That -- the idea that you don't need to proffer it because -- if the Florida Supreme Court rules that you don't have jurisdiction to hear

- PAGE 2685 -

affirmative defenses -- which I, quite frankly, find hard to believe they're going to rule that way -- but the assumption that, "Well, if they rule against me on the affirmative defenses, then I don't need to proffer" ignores the fact that -- as I had stated throughout the proceedings, that I fully intend to take this issue to the United States Supreme Court. And the United States Supreme Court has a right to hear what these witnesses would have actually said in determining whether or not these things should have been also accepted in the proffer.

* * *

- PAGE 2689 -

JUDGE GRAHAM: The selective-prosecution witnesses were the ones to show the things that Judge Edwards and Judge Thurman have done.

- PAGE 2690 -

which have been so much worse than anything I have done; to show that the reason that I'm being prosecuted is not because I'm unethical but because I speak up against the system, and the people who are entrenched in the system do not like the words that I say.

* * *

- PAGE 2693 -

JUDGE GRAHAM: Well, with Judge Edwards, I would say that I expect to go into all of his misconduct. That's what I would go into.

THE CHAIRMAN: Right. But you see, Judge, I've already -- the Commission has already ruled that that particular issue is something that we're not going to address, because that selective-enforcement issue -- the Commission has taken the position that it is not an affirmative defense.

Now, you say you won't have a record to take to whatever appellate court you may want

- PAGE 2694 -

to go through, either the state or the federal court, and all I can say to you is: If the Commission is in error, then they will give us the direction to do the right thing, I would presume.

JUDGE GRAHAM: Yes. But that's just the Florida Supreme Court decision.

THE CHAIRMAN: Well, even the federal court. If you -- if the federal court -- if you're saying that you need a record for

the federal court, which we're really -- that's not the function of this Commission hearing, is to preserve a record for the federal court. I mean, I know you've established a lot of arguments along that line, but I can't be gearing our Commission hearings for appellate review. I know you want to do that, but I can't do that.

* * *

- PAGE 2697 -

THE CHAIRMAN: No, Judge, because that's going into the area of selective enforcement and -- well, not so much selective enforcement as favoritism and politics in the administration of justice.

* * *

- PAGE 411 -

(Recess from 1:18 p.m. to 1:25 p.m.)

THE CHAIRMAN: Please be seated. The affidavit has been filed, and I'm filing it with the clerk as matters that have been filed by Judge Graham. And the motion to disqualify the Commissioners, as indicated, is denied. Madame, would you hand this to the clerk.

JUDGE GRAHAM: I would like to state certain objections and reservations for the record.

THE CHAIRMAN: There are -- I will take no argument on it. Please proceed with questioning, Mr. Bostic.

* * *

- PAGE 2190 -

* * *

THE CHAIRMAN: Judge, ask your question. I'm not going to take any further argument on this.

JUDGE GRAHAM: Permission to note for the record that when I'm upset with attorneys for arguing, it's because they continue to argue after I allow them to make an argument, and that the Chair refuses to allow me to even make an argument in the first instance. May I have permission to note that?

- PAGE 2369 -

* * *

JUDGE GRAHAM: I object to the triers of fact --

- PAGE 2381 -

* * *

JUDGE GRAHAM: Again, I voice my objection to --

THE CHAIRMAN: All right, Judge.

JUDGE GRAHAM: -- the trier of fact impeaching my witnesses.

* * *

DOCUMENT 24

Excerpts from Transcripts

of the Pre-trial Conference

* * *

JUDGE GRAHAM: 1-D. "In open court and during a hearing in State v. Pfiester, you accused State Attorney Brad King of favoritism while he was an Assistant State Attorney in his handling of State versus Ortolano."

All of these statements are true. I'm going to prove it. I'm going to prove to you that there's politics and favoritism in the Citrus County Court system. It's been here forever, and the day it ended was the day I took office; and that the reason this selective prosecution has been made is so that the people who want it that way can get the court back to being a court of politics and favoritism.

And the entrenched politicians of this community didn't want me saying it, the Commission doesn't want me saying it because

I'm a judge, and now they don't want to even allow me to prove it.

MR. BOSTIC: Mr. Chairman, I would like to respond; and I have made this response in depositions, when I've made objections, at least five or six times.

Judge Graham seems to think that the allegations in 1-B, C, D, and E open up the door for him to march in and with any type of evidence to prove anything he can about politics and favoritism in the Citrus County Court, and that is just not accurate.

If you -- first of all, if you read

Allegation 1, before you even get to the A, B, or C -- "You have repeatedly used your position as a judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others,

without reasonable factual basis or due regard for their personal and professional reputations. This allegation includes, but may not be limited to, the following:"

Then you get to Item B -- and let me take Item B for example. "In an article published September 15, 1988, in the St. Petersburg Times, several weeks before the election for State Attorney, you are quoted as saying, 'I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers.' According to the report, you refused to discuss specific cases."

Now, let's stop and look at that one. The only issue is what he knew on September 15th, 1988, with respect to the statement that he had made; i.e., he knew of doctors and

lawyers who had been arrested for DUIs and had their DUIs reduced to reckless driving. That is the issue, not how other people perceive the courts, not whether there has been politics or favoritism in the Citrus County courts since the beginning of time. The only issue is what he knew on September 15th, 1988, as the basis for the statement that he made from the bench.

Item C. "On February 20th, 1991, in open court and during a hearing in the case of State v. Pfiester, you accused the Office of the State Attorney of 'routinely regulating' DUI offenses of lawyers and doctors to reckless driving 'for no apparent reason.'"

Again, the only issue is: What is his basis for making that statement? And what he attempted to do during the course of discovery was to bring in -- I don't know -- about 35 lawyers and ask them, "Have you ever been arrested for DUI? Has anyone in your family

ever been arrested for DUI?" That's not the issue. The issue is what he knew when he made these statements and what the factual basis was.

And when I say "what he knew when he made

the statements," I don't mean what he knew about or what he thought about the general atmosphere of politics and favoritism in Citrus County. It's what he knew about the specific statement that he was making at the time he made it.

You've got to freeze it in time. September, 1988, you made a statement you know of doctors and lawyers who have had their DUIs reduced for reckless and careless driving, period. Very limited issue.

And I submit that the only way that there will ever be a reasonable basis for him making the statement is for him to take that witness

stand and testify as to who those doctors and lawyers were that he knew of in 1988. And if he chooses not to do so in his own case, then B is proven.

The same argument, Mr. Chairman, relates also to C, D, and E.

JUDGE GRAHAM: Mr. Chairman, the Commission is in a real pickle on this. You see, this is a democratic country. I'm an elected public official. I never dreamed that a judge in a discussion with a newspaper

reporter or -- excuse me -- that a judge could never state that there was politics and favoritism in the court system and be called on the carpet and say, "You prove it."

My understanding is that the Commission has the burden, through clear and convincing evidence, to prove it's not true. Despite the fact that they have not put one piece of

evidence -- oh, excuse me. Yeah. They had Brad King say -- "You ever been involved in politics and favoritism?" and he said, "No." Boom. That's the clear and convincing evidence that Mr. Bostic wants to carry the day with. Mr. King said, "No." "Okay. Fine." I expect the Commission, because of my constitutional arguments, to buy that; that that's clear and convincing evidence that what I said was not true.

THE CHAIRMAN: Why do you feel the Commission is going to buy that?

JUDGE GRAHAM: Because I feel that this Commission is prejudiced against me because of the institutionalized way it is organized; the fact that they hear for years -- they hear all the complaints of every disgruntled litigant

and every political opponent I've beat at the elections. And it sits there and hears one

side of the story for six years, and then, boom, it gets fed up; it gets a couple of newspaper editorials sent to it saying, "Gee, where's the JQC?" and it -- enough said? Okay.

* * *

- PAGE 297 -

JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

* * *

- PAGE 305 -

THE CHAIRMAN: B. On a proffer, I should say; that will be proffered.

Item No. 95 will be proffered before being offered. 96,97,98 will be allowed. Items 106,109, and 113 will be allowed. Items 114,115,116,117,119,120,121, and 122 will be allowed. Items 131,133,134 will be allowed.

* * *

- PAGE 316 -

THE CHAIRMAN: Well, I have announced the Motion Committee's actions in reference to the motion in limine in that, as I explained to you, they have granted it in part, and I recited to you what was granted and what was not granted, and I'm not going to repeat them again. They're in that record. And if you don't think that record will suffice, then all I can say is you can bring it to my attention again. I'm sure I will be around, and the Motion Committee will be around. Okay? I have to leave now, so I'm going off the record. She didn't get her break, so let the court reporter stretch her fingers for a couple of minutes.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Judge.

- PAGE 317 -

(Recess from 5:39 p.m. to 5:41 p.m.)

JUDGE GRAHAM: I'd like to voice my objections to the proceedings on the record as allowed by the Chairman.

I would bring to the appellate court's attention that I'm standing in a hearing room before the bench, with no presiding official, making these statements. This is yet another first in my experiences in process of law. I'd also -- let the record reflect that Special Counsel has left.

Mr. Bailiff, could you close the door? Mr. Bailiff, could you have that door closed, too, because of the --

As I was saying, this is -- Mr. Bostic and General Counsel have left, and I'm here arguing objections to the proceeding to Madame Court Reporter alone. This is yet another first in my experiences of what is supposed to be a process of law with the Judicial Qualifications Commission.

I've never before been involved in any proceedings where motions were heard without notice and without hearing, where the dispositions are approved by the Commission

without notice of their hearing date, without an opportunity to argue the rulings of the Motion Committee, and where proffers are

made after -- both evidence, relevancy, and objections are made to an empty courtroom after everyone leaves. I've never seen that done before, and I just hope it will convince the appellate courts that we are not proceeding according to any rules of law or procedure known to advocates of law.

I object, Mr. Chairman, to the fact that this motion in limine was somehow decided upon by the Motion Committee. I've never seen the Motion Committee -- excuse me -- this motion in limine with respect to this evidence; not the filed motion in limine, but the motion in limine which has been argued these past nine hours.

I never saw a member of the Motion Committee here except for chairman Reiter. If he had any discussions with the members of the Motion Committee, I don't know what they were. I wasn't given an opportunity to challenge anything that he said to them. I was not willing to make arguments of law to the other

Motion Committee members. And somehow or other, the Motion Committee was able to basically destroy my case and prevent me from defending myself, and I have no idea on what basis they did that.

I would restate my objections to that process based on the decisional authority of Hastings v. United States and Nixon v. United States where the United States Supreme Court has stated that where a deliberative body is created by the constitution, that it is an impermissible denial of due process and unconstitutional to delegate a subgroup to make those deliberative functions -- deliberative decisions. In this case we've had both an institutionalized delegation of that authority followed by an ad hoc delegation of that authority.

First, the Commission, by its own rules, allowed motions to be heard by a three-member group, thus denying the respondent judge the benefits of the diversity of representation contemplated by the Florida State Constitution and his right for the full body to hear the evidence and the arguments -- that's an

institutionalized problem. It's inherent in the rules -- followed by the fact that in today's proceedings, evidently the Motion Committee itself subdelegated its authority to Mr. Reiter. And, of course, as I pointed out Mr. Reiter is an individual who has twice threatened me with contempt and, in his words, recommended that I be

incarcerated. So I hope that the appellate courts will understand the degree of derogation that has been imposed on my fundamental right to constitutional procedures and due process of law.

I would object to the massive intrusion into the defense of this case, represented by the rulings on evidence, in which I'm fundamentally not being allowed to raise any affirmative defenses, and I'm not being allowed to present collateral, circumstantial, and corroborative evidence into the record.

I would also note for the record that Special Counsel had an opportunity months ago, when the affirmative defenses were filed, to respond to those pleadings by a motion to strike. Special Counsel chose not to strike the affirmative defenses. Special Counsel

chose to deny them. That closed the pleadings on or about December 30th. Now, the effect of not striking the affirmative defenses but denying them was to put them at issue.

And then, by Special Counsel's count, respondent judge then proceeded to take 81 depositions in approximately 35 days, many of which were directed to his affirmative defenses. Furthermore,

respondent judge set about obtaining court files, audio transcripts, preparing transcripts of audio tapes, and obtaining -- strike that -- pursuing very expensive, time-consuming efforts toward proving his affirmative defenses.

And then, to compound the fact that the Commission has dismissed almost half of the charges brought against the respondent judge, it then says, "Not only have you wasted all that time, effort, and money toward 19 charges which we abandoned, but now all the time, effort, and money you have spent toward your defense on the affirmative defenses is wasted." And fundamentally, the Commission has taken the position that all that's at issue is: Did you say it? And, in our view, is it

unethical.

And I am now in a position where, basically, I have nothing really to defend myself with; and I hope that the appellate courts will recognize this as substantial evidence of this Commission's real prejudice and bias against me, a prejudice which comes from the fact that I have, as part of what I thought were my ethical obligations to stand up for the integrity and independence of the

judiciary, to criticize misconduct of those before the court and that those criticisms included criticisms of attorneys and judges and others involved in the court system and that now I am being judged by attorneys and judges and influential people.

And they not only are a group of attorneys and judges and influential people who are going to be my judges, but they are the people or the individuals or the institution that investigated and decided to charge me. And it seems apparent to me that the problem is: This Commission now does not want to face the reality that it made a mistake, and the way to avoid that reality is to not allow this

respondent judge to defend himself.

I don't believe the Commission wants to hear how bad the conduct of some attorneys have been in this county, I don't think they want to hear about the politics and the favoritism in this small, rural county, and I don't think they want to know the truth. I think that this Commission just wants to find me guilty of misconduct.

And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the

denial of my due process rights to make a defense against these false and trivial charges. End of objection.

(Proceedings conclude at 5:52 p.m.)

* * *

- PAGE 295 -

THE CHAIRMAN: All right. We'll take a five-minute break -- five or ten minutes, Mr. --

JUDGE GRAHAM: It takes ten minutes to get to my office.

THE CHAIRMAN: All right. Ten-minute break.

(Recess from 4:54 p.m. to 5:05 p.m.)

THE CHAIRMAN: All right. Are you ready, Judge Graham and Mr. Bostic -- about the Chair's recommendations and some information

- PAGE 296 -

I'll bring to you from the Motion Committee.

JUDGE GRAHAM: I'm ready for information from the Motion Committee.

THE CHAIRMAN: I'm going to tell you certain things that have occurred and that will occur, and I want to have your undivided attention. I want you to be able to write this down, because I

don't want to go into a great debate with it. When I tell you what the rulings are, I want you to understand what I've ruled.

I will not take argument after I make the Commission's findings -- or the Commission's recommendations -- known. I will not entertain any further argument today.

And what I'm going to do is first tell you -- Judge, would you mind --

JUDGE GRAHAM: Can I have a point of clarification?

THE CHAIRMAN: Yes. Go ahead.

JUDGE GRAHAM: Do I understand that you're not going to allow me to argue before or after you give me the rulings?

THE CHAIRMAN: Right. The arguments have been made, and we're going to take if from

there.

JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and

procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

All right. The first thing is that, you know, we will proceed next Tuesday here at 9 o'clock in this courtroom to complete the proceedings, and the proceedings are designated to be completed by Friday.

Secondly, the Motion Committee has reviewed all the pleadings θhat are in the file, obviously, and have reviewed the motion in limine. And the motion in limine is going to be granted in part in that the Commission will not adjudicate the issue of

constitutionality of the Code of Judicial Conduct or the constitutionality of this Commission. This Commission will not adjudicate selective enforcement.

JUDGE GRAHAM: Mr. Reiter, I can't write that fast. If I could --

THE CHAIRMAN: All right. Go ahead.

JUDGE GRAHAM: Code of conduct. Also of the Commission itself --

THE CHAIRMAN: Yes.

JUDGE GRAHAM: -- or selective prosecution. Okay. Thank you, sir.

MR. RHODES: In the interest of helping the judge and the Chairman, I've asked the court reporter if she could transcribe your announcements first thing tomorrow. She has assured me that she could, and we could make that available to Judge Graham and to Special Counsel.

THE CHAIRMAN: Further, the Commission is going to only consider testimony that deals directly with the allegations raised in the pleadings by the Commission of Special Counsel in reference to the remaining -- I believe it's 26 statements of -- allegations of fact with

the six areas that are complained of violation of the code.

Now, as far as limitation of witnesses are concerned -- there has been several witnesses that have been listed -- over 400 witnesses listed -- by the Respondent, Judge Graham; and the

Commission will not take any testimony as to witnesses that are defined as witnesses who will testify as to their percipient observations of the administration of justice in Citrus County Court. I'm not sure what that term means -- "percipient" -- but that is not -- those 250 witnesses will not be testifying as to their opinions in this case; however, you may allow -- we have allowed that you will -- strike that. You will be allowed to present testimony of the character witnesses as defined in the prior order -- the two character witnesses -- and three witnesses as to opinions as to any alleged violations of the Code of Judicial Conduct.

Further, the Commission will not adjudicate the issues of, quote, vagueness, end quote, of the Code of Judicial Conduct and will not accept testimony of judges as to that

issue.

As to testimony involving any factual impeachment, that certainly will be accepted, or any witnesses that go to credibility of evidence that's been presented. The Commission will not take any evidence whatsoever from members of the Commission on the

alleged misconduct of the Commission as has been suggested by Respondent.

The Commission will not take any testimony on the issue of selective prosecution, so any witnesses that deal with selective prosecution and/or the alleged Commission conduct will not be heard; however, Judge Graham, you have a right to supplement these proceedings with testimony and/or presentation of evidence, at the close of the evidence that is presented, solely for the purpose of the allegations made in the consolidated charges that are now pending that have been reduced to 26.

So after that presentation of evidence, when you're finished presenting your witnesses and Mr. Bostic has completed any evidentiary proceedings that he's going to present in

rebuttal, if there is any allowed, you may then present to the record as a supplement for whatever purpose -- proffer that testimony and/or exhibits that you think should go up to the Supreme Court; but the Commission will not listen to that, and we will not -- I will not chair that proceeding. It's simply that you may do it. You may, if so stipulated with Mr. Bostic, bring into the record, by your

own testimony -- I mean, by your own statement -- what the witnesses would have testified to.

Now, as far as limitation of witnesses are concerned, other than the character witnesses and the opinion witnesses I've mentioned earlier, in reference to allegations dealing with attorney misconduct -- more particularly as to Count 1 -- you may present testimony as to those attorneys' misconduct that occurred prior to that date that you had knowledge of and that was the basis of your opinion. We will not take -- the Commission will not take testimony of events occurring after that date when there are no charges pending for -- against Judge Graham for any alleged misconduct after, I believe, August of

- PAGE 302 -

1988. We would want to limit the live testimony of the attorneys' misconduct to three live witnesses to support that allegation.

* * *

- PAGE 314 -

* * *

THE CHAIRMAN: All right. Now, it is my intent, once again, to start at 9 o'clock, to take a morning break, to go to lunch

in the afternoon, and then to go as late as we deem with that particular day or presentation of the evidence; but it's the Commission's intent to finish this matter by Friday.

JUDGE GRAHAM: One point of clarification?

THE CHAIRMAN: Sure, Judge.

JUDGE GRAHAM: After you leave, I'm supposed to voice my objections for the record?

THE CHAIRMAN: Yes, Judge. If you want to do it now, fine. I'm not going to rule on anything. If you want to preserve your record, you're welcome to do it; but maybe the court reporter would like to stretch her fingers for two minutes before you do that.

Thank you very much.

DOCUMENT 25

Excerpts from Transcripts of Proceedings

Before the JQC

July 31, 1992

(Second Rule 6b Hearing)

FLORIDA JUDICIAL QUALIFICATIONS
TALLAHASSEE, FLORIDA

IN RE: #91-415
- - - - - - - - - - - - - - - - -

TRANSCRIPT OF:	PROCEEDINGS
DATE:	July 31, 1992
PLACE:	Tampa Airport Marriott Hotel Charlotte Room Tampa, Florida
TIME:	Beginning at 9:32 a.m.
REPORTED BY:	Terri Dukes Notary Public State of Florida at Large

---

RICHARD LEE REPORTING
Registered Professional Reporters
501 East Kennedy Boulevard • Suite 910
Tampa, Florida 33602
(813) 229-1588

[Exhibit 115]

where is Mrs. Mahon?

JUDGE GILLMAN: Look at your chart.

JUDGE GRAHAM: I -- what is your profession?

VICE CHAIRMAN REITER: The Commission will not answer questions.

JUDGE GRAHAM: I see. Well, it wasn't really a question. I just wanted to be introduced.

VICE CHAIRMAN REITER: Well, you were directing a question to her, and our procedures are such that you may make a presentation of your case, your evidence, as you want to do it, and then we will ask you questions.

JUDGE GRAHAM: May I ask, is there anyone on this Commission who has experience in or is related to the newspaper business?

VICE CHAIRMAN REITER: The Commission will not accept questions from you. Suffice to state that everyone sitting here has been validly appointed to the Judicial Qualifications

Commission by their respective judicial conferences or by the Governor or by The Bar.

- PAGE 14 -

JUDGE GRAHAM: May I proffer the questions that I intend to ask of the members?

VICE CHAIRMAN REITER: You have a right to proffer.

JUDGE GRAHAM: Is there anyone on the Commission who has experience in or is related to the newspaper business? It was then my intention to ask Judge Wigginton, have you read or otherwise been exposed to any newspaper articles or editorials about me? If his answer was yes, I was going to ask him which ones and the dates.

The second question would be, have you read or otherwise been exposed to any newspaper articles or editorials criticizing the JQC for not sanctioning me? If his answer was yes, I was going to ask him the name of the publication and the date.

Question three, has any newspaper editor or journalist filed a complaint, written a letter or talked to you about me? If his answer was yes, I was going to ask him the name, publication and date of what was said.

My next question would be, has any justice or any judge of the State of Florida either filed a complaint, written a letter or talked to you about me? If the answer was yes, I was going to ask the name, the publication, the date and what was said.

The next question would be, has any State Attorney, Public Defender, County Sheriff, law enforcement officer or their assistants or deputies either filed a complaint, written a letter or talked to you about me? If the answer was yes, I was going to ask him their name, their title, the date and what was said.

Has any elected official either filed a complaint, written a letter or talked to you about me? If his answer was yes, I was going to ask him the name, the title, the date and what was said to him.

The next question, has any individual -- excuse me -- I was going to ask him, sir, you have read the charges in the Amended Notice of Investigation. Do you know anything about my case other than the charges contained in the Amended Notice either through your own personal knowledge or by discussion with

anyone else? If his answer was yes, I was going to ask him what that was.

The next question was going to be, are you acquainted with me?

The next question was going to be, counsel representing the Commission is Mr. Roy Rhodes. Are you acquainted with him? And the extent of his acquaintance.

The next question would be, do you believe that it is unethical for a judge to try to be creative or have unusual sentences as alternatives to jail sentences? If his answer was yes, I was going to ask him to further explain himself. If his answer was no, I was going to ask him to further explain himself.

The next question would be, do you believe that it is unethical for a judge to criticize others? If his answer was yes, I was going to ask him to explain himself. If his answer was not, I was going to ask him to explain himself.

The next question would be, have you ever voted after a JQC trial to completely acquit a judge? If his answer was yes or no,

I was going to ask him further specifics.

The next question would be, in the time you have been on the JQC, has the Commission after a trial ever voted to completely acquit a judge? If his answer was yes or no, I was going to ask him to further explain and give details.

Have you ever made a speech or a public presentation or prepared any writing explaining the functions and duties of the JQC? If his answer was yes, I was going to ask him particulars.

The next question would be, did your presentation, speech or writing contain a position that the JQC has a duty to ensure that judges are not unfairly accused?

The next question would be, did your presentation, speech or writing contain a position that the JQC has a duty to ensure that these proceedings were not used for political purposes?

The next question would be, counsel to the Commission is Mr. Terry Bostic. Are you acquainted with him? If his answer was yes, I I was going to ask him for further details.

The next question would be, are you acquainted with any other member of the JQC? If his answer was yes, I was going to ask him for particular details.

The next question would be, are you related by blood or marriage or have a social or business relationship or a close acquaintance with any complainant or witness in this case? If his answer was yes, I was going to ask him for further details.

The next question would be, have you ever won a contested election for public office? If his answer was yes, I was going to ask him the position, when and where.

The next question would be, have you ever been jailed, place on probation, fined or otherwise sanctioned by a judge? If his answer was yes, I was going to ask him further particulars.

The next question would be, have you ever been a civil litigant? If his answer was yes, I was going to ask him further particulars.

The next question would be, has a judge ever rendered an adverse ruling involving your

interest in civil litigation? If his answer was yes, I was going to ask him particulars.

The next question would be, have you ever been arrested for a DUI? If his answer was yes, I was going to ask him for further particulars.

The next question would be, have you ever received a traffic or parking ticket? If his answer was yes, I was going to ask him further particulars.

The next question would be, do you know of any of your friends or relatives or of any judge, lawyer or influential person who has been arrested for a DUI and had his case dismissed or reduced to a lesser offense? If his answer was yes, I was going to ask him for further particulars.

My next question would be, do you have any knowledge whatsoever concerning the facts of this case whether garnered from newspaper, radio, television or rumor? If his answer was yes, I was going to ask him for further particulars.

My next question would be, have you ever had a judicial decision reversed on appeal?

If his answer was yes, I was going to ask him for his particulars.

The next question would be, have you ever had a judicial decision reversed for, quote, abuse of discretion? If his answer was yes, I was going to ask him for particulars.

My last question would be, have you ever been the subject of or mention in a newspaper article or editorial? If his answer was yes, I was going to ask him for full particulars.

Mr. Chairman, it was my intention to voir dire each member of the Judicial Qualifications Commission with respect to these same questions. It is my understanding that the Commission would not allow that. Is that correct?

VICE CHAIRMAN REITER: That's how the Chairman rules.

JUDGE GRAHAM: At this time, I would like to make an objection for the record. I object that the refusal of the Committee to answer these questions violates both the procedural and substantive due process rights of both the Federal and State Constitution and to the rights of freedom of expression.

* * *

DOCUMENT 26

Answer to Affirmative Defenses

and

Motion to Strike Demand for Jury Trial

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING

CASE NO. 80,273

A JUDGE, NO. 91-415

/

ANSWER TO AFFIRMATIVE DEFENSES AND MOTION TO STRIKE DEMAND FOR JURY TRIAL

The undersigned counsel for the Judicial Qualifications Commission ("Commission") hereby denies the affirmative defenses raised in Respondent's Answer, Counterclaim and Demand for Jury Trial dated December 18, 1992 and further moves to strike Respondent's Demand for Jury Trail on the basis that the Constitution of the State of Florida and the applicable Rules do not provide for the requested jury trial.

Respectfully submitted,

Terrance A. Bostic, Esq.
Alicia J. Schumacher, Esq.
220 South Franklin Street
Tampa, Florida 33602
(813) 224-9255
Attorneys for the Judicial Qualifications Commission

By: /s/Alicia J. Schumacher
Terrance A. Bostic
Fla. Bar #304366
Alicia J. Schumacher
Fla. Bar #864330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail delivery to Judge Gary Graham at Old Citrus County Courthouse, Room 215, Inverness, Florida, 32650-4802 and to Roy Rhodes, Esq, General Counsel, the Florida Judicial qualifications Commission, Room 102, The Historic Capitol, Tallahassee, Fl 32399-6000, this 30th day of December 1992.

/s/ Alicia J. Schumacher
Attorney

DOCUMENT 27

Order Granting in Part Motion

In Limine and Limitation of Witnesses

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING

CASE NO. 80,273

A JUDGE, NO. 91-415

/

ORDER GRANTING IN PART MOTION IN LIMINE AND LIMITATION OF WITNESSES

ORDERED AND ADJUDGED the Motion in Limine filed by Special Counsel for the Judicial Qualifications Commission is granted in part and the Commission will not consider the issues of constitutionality of the Judicial Qualifications Commission, the constitutionality of the Judicial Code of Conduct, the alleged vagueness of the Judicial Code of Conduct, the alleged selective enforcement of the Judicial Code of Conduct, the alleged and observations of the Administration of Justice and alleged favoritism in Citrus County Court except as herein stated.

Testimony will be accepted as to character witnesses as previously indicated in the Commission's prior Order. The respondent Judge will be allowed up to three witnesses as to the allegations of politics and favoritism as alleged in Item 1D of the Consolidated Statement of Charges and 1E (State v. Ortolano and State v. Phiester). Additionally, up to three witnesses will be

allowed to render opinions as to the alleged violations of the Judicial Code of Conduct.

DATED this 18th day of February, 1993, NUNC PRO TUNC 3/25/93.

/s/ JJR
(JJR)

FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION - MOTION COMMITTEE

By: /s/ Joseph J. Reiter

Joseph J. Reiter, CHAIRMAN
Florida Judicial Qualifications Commission
Room 102 - The Historic Capitol
Tallahassee, FL 32399-6000
(904) 488-1581

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Judge Gary Graham, Post Office Box 519, Inverness, FL 34451-0519, and to Terrance A. Bostic, Esq., Post Office Box 3401, Tampa, FL 33601-3401, this 30th day of March 1993.

/s/ Roy T. Rhodes
Special General Counsel

DOCUMENT 28

Florida Judicial Qualifications

Commission Rules

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION RULES

Adopted by the Commission May 18, 1984

Accepted by the Supreme Court September 13, 1984 (458 So.2d 1116)

RULE 1. SCOPE AND TITLE

These rules apply to all proceedings before the Judicial Qualifications Commission involving the discipline, retirement or removal of justices of the Supreme Court, and judges of the District Courts of Appeal, Circuit Courts, and County Courts pursuant to Article V, Section 12 of the Constitution of the State of Florida, as amended, and removal or disqualification of members of the Commission. These rules shall be known as Florida Judicial Qualifications Commission Rules and may be abbreviated as "FJQCR".

RULE 2. DEFINITIONS AND VOTE

(a) In these rules, unless the context or subject matter otherwise requires:

(1) "Commission" means the Judicial Qualifications Commission.

(2) "Judge" means a justice of the Supreme Court and a judge of the District Court of Appeal, Circuit Court and County Court.

(3) "Chairman" includes the acting chairman.

(4) "General Counsel" means any member of The Florida Bar designated by the Commission to serve as legal advisor to the Commission, and to perform such other duties as authorized by the Commission.

(5) "Counsel" means any member(s) of The Florida Bar designated by the Commission to gather and present evidence before the Commission with respect to the charges against a judge and to represent the Commission in all proceedings, including investigations.

(6) "Shall" is mandatory and "may" is permissive.

(7) "Mail" and "mailed" include ordinary mail and personal delivery.

(8) The masculine gender includes the feminine gender.

(9) "Member" means a member of the Commission.

(b) Vote required:

(1) Unless otherwise provided in these rules, Commission actions shall be by a majority vote of the members present and voting.

(2) A finding of probable cause against a judge or recommendation of suspension of a judge shall be by an affirmative vote of note less than seven (7) members.

(3) A finding that a judge is guilty shall be by an affirmative vote of not less than nine (9) members.

(4) The recommendation of discipline following a finding of guilty shall be by an affirmative vote of not less than nine (9) members.

(5) The removal of a member of the Commission shall be by an affirmative vote of note less than seven (7) members.

RULE 3. MEMBERSHIP AND JURISDICTION

(a) The membership of the Commission shall be as prescribed in Article V, Section 12 of the Constitution of the State of Florida and for such term as prescribed by general law. When a judge ceases to be a judge of the court from which he was appointed or whenever any member becomes otherwise ineligible to hold office, his membership on the Commission shall terminate. The Chairman shall promptly notify the appointing authority of the vacancy. In the event of a vacancy the Commission shall appoint a temporary replacement from the same category until such time as the appointing authority shall duly certify to the Commission a replacement for the remainder of the term.

(b) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or to cause to be taken the deposition of witnesses, to order the production of books, records or other documentary evidence, and the power of contempt. In any matter within the jurisdiction of the Commission requiring the appearance of any person before the Commission or any member, any member shall have the power to issue subpoenas and to administer oaths and affirmations to such persons.

RULE 4. OFFICERS OF THE COMMISSION

The Commission shall elect a Chairman and a Vice-Chairman, each of whom shall serve for a term of two years. The Vice-Chairman shall act as the chairman of the Commission in the absence of the Chairman. The Commission may appoint an executive director and a General Counsel.

RULE 5. QUORUM OF COMMISSION

A quorum for the transaction of business by the Commission shall be seven members except as otherwise provided in these rules.

RULE 6. COMPLAINT AND INVESTIGATION

(a) The Commission, upon receiving factual information, not obviously unfounded or frivolous, or an individual complaint made under oath, indicating that a judge is guilty of willful or persistent failure to perform his duties, or conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or that he has a disability seriously interfering wit the performance of his duties, which is, or is likely to become, permanent in nature, may make an investigation to determine whether formal charges should be instituted.

(b) The judge has no right to be present or to be heard during an investigation, but before the Commission determines that there is probable cause to initiate formal charges, the judge shall be notified of the investigation, the general nature of the subject matter of the investigation, and shall be afforded reasonable opportunity to make a statement before the Commission, personally or by his attorney(s), verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct or disability. The judge shall not have the right to present other testimony or evidence, and he shall not have the right of confrontation or cross-examination of any person interviewed, called or interrogated by the Commission. Such notification shall be given personally or by registered or certified mail addressed to the judge at his chambers or, if returned undelivered, at his last known residence.

(c) The Commission shall have the right to require a judge to meet with it on an informal basis in reference to matters that relate to his judicial duties.

(d) When a judge has received a notice of investigation, notice to appear before the Commission, or

requested such notification, if the investigation does not disclose probable cause to warrant further proceedings, the judge shall promptly be so notified.

(e) The Commission shall have access to all information from all executive, legislative and judicial agencies, including grand

juries. At any time, on request of the Speaker of the House of Representatives or the Governor, the Commission shall make available all information in possession of the Commission for use in consideration of impeachment or suspension, respectively.

RULE 7. FORMAL CHARGES-- PROCEEDINGS

(a) If the Commission finds probable cause that formal charges should be filed against the judge, it shall designate one or more Counsel who shall prepare appropriate papers and pleadings, gather and present evidence before the Commission with respect to the charges against the judge, and otherwise act as counsel in connection with the prosecution of the charges against the judge, including the representation of the Commission in connection with any Commission or judicial proceedings. It shall direct Counsel to cause to be served on the judge a copy of the Notice of Formal Charges. Such proceedings shall be entitled:

"BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION"

"Inquiry Concerning a Judge, No. ____"

(b) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege essential facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 20 days after service of the notice upon him.

(c) Service shall be made personally or by registered or certified mail addressed to the judge at his chambers or, if returned undelivered, at his last known address.

(d) After formal charges have been instituted, any notice or other material shall be mailed to the judge at his residence address or to his attorney(s).

RULE 8. SUSPENSION OF JUDGE

Subsequent to the filing of the notice of investigation, or upon or after the filing of the Notice of Formal Charges, the Commission may, in its discretion, issue its order directed to the judge ordering him to show cause before the Commission why the Commission should not recommend to the Supreme Court that he be suspended from office, either with compensation or without compensation, while the inquiry is pending. The order to show cause shall be returnable before the Commission at a designated place and at a time certain, at which place and time the Commission shall consider the question of suspension. Thereafter, the Commission, not less than seven (7) members concurring, may recommend to the Supreme Court that the judge be suspended from performing the duties of his office either with or without compensation, pending final determination of the inquiry. If the Commission recommends suspension, such recommendation shall have incorporated therein a record of the proceedings of the Commission in relation to the recommendation.

RULE 9. ANSWER AND MOTIONS

(a) Within 20 days after service of the Notice of Formal Charges, the judge may file an Answer. If the judge desires that all hearings be held in the county of his residence, he shall so demand in writing at the time of filing his initial answer.

(b) There shall be a motion Committee with the power to dispose of all pre-trial motions. Such Committee shall be composed of the Chairman and two judges appointed by the Chairman. The Committee's disposition shall be subject to review at the Commission's next ensuing meeting.

RULE 10. FILING

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Commission shall be public.

(b) The original of all pleadings subsequent to the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court

of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection. A duplicate original of all pleadings filed in the proceeding shall be served on each party, with a copy to the Commission office.

RULE 11. SETTING FOR HEARING

After the filing of an Answer or the expiration of the time for its filing, the Commission shall set a time and a place for a hearing and shall give notice of such hearing at least 20 days prior to the date set. If the judge timely requests that hearing(s) be held in the county of his residence, it shall be so held unless the Commission, by an affirmative vote of at least nine (9) members, determines otherwise.

RULE 12. PROCEDURE

(a) In all formal proceedings, the Florida Rules of Civil Procedure shall be applicable except as otherwise provided.

(b) Counsel shall, upon written demand of a party or counsel of record, promptly furnish the following:

The names and addresses of all witnesses whose testimony the Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Commission which are relevant to the subject matter of the hearing and which have not previously been furnished. When good cause is shown this rule may be waived.

RULE 13. HEARING

At the time and place set for hearing, the Commission may proceed with the hearing whether or not the judge has filed an Answer or appears at the hearing.

RULE 14. DISABILITY

Upon receiving information that a judge is suffering a possible physical or mental disability which seriously interferes with the performance of his judicial duties, the Commission, upon the vote of nine members, may order the judge to submit to a physical and/or mental examination. If the judge fails to submit to such examination within the time ordered, the Commission may recommend to the Supreme Court that the judge be suspended without compensation until such time as the judge complies with the Commission's order.

RULE 15. EVIDENCE

At a hearing before the Commission, legal evidence only shall be received and oral evidence shall be taken only on oath or affirmation.

RULE 16. PROCEDURAL RIGHTS OF JUDGE

(a) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by attorney(s), and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the trial testimony has been prepared at the expense of the Commission, a copy thereof shall be furnished without cost to the judge. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(c) If the judge is adjudicated incompetent, the Commission shall appoint an attorney ad litem unless the judge has a guardian who will represent him. The guardian or attorney ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules

provide for the serving or giving notice or sending any matter to the judge, a copy of such notice or matter also shall be served, given or sent to the guardian or attorney at litem.

RULE 17. AMENDMENTS TO NOTICE OR ANSWER

The Commission may in the interest of justice allow or require amendments to the Notice of Formal Charges and may allow amendments to the Answer. In case such amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

RULE 18. EXTENSION OF TIME

The Chairman of the Commission may extend the time for filing an Answer or for the commencement of a hearing before the Commission.

RULE 19. HEARING ADDITIONAL EVIDENCE

The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be sent by mail at least 10 days prior to the date of the hearing.

RULE 20. COMMISSION VOTE

After conclusion of the hearing and consideration of the issues presented for decision, the Commission shall first determine by vote the judge's guilt or innocence of the formal charges. If the Commission determines by an affirmative vote of not less than nine members that the judge is guilty of one or more of the charges so specified, it shall then proceed to determine the discipline to be recommended. Failure to recommend the imposition of a penalty

by the affirmative vote of not less than nine members shall constitute a dismissal of the proceedings.

- PAGE 607 -

RULE 21. CERTIFICATION OF COMMISSION RECOMMENDATIONS TO SUPREME COURT

Upon dismissal by the Commission of the formal charges, the Commission shall promptly file a copy of the dismissal order certified by the Chairman, General Counsel or executive director of the Commission in the office of the Clerk of the Supreme Court of Florida. Upon making a determination recommending discipline, retirement, or removal of a judge, the Commission shall promptly file a copy of the recommendation certified by the Chairman, General Counsel or executive director of the Commission, together with a transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall promptly mail to the judge and to his attorney(s) notice of such filing, together with a copy of such recommendations, findings, and conclusions.

RULE 22. REVIEW OF COMMISSION PROCEEDINGS

To the extent necessary to implement this rule, the Florida Appellate Rules shall be applicable to reviews of Commission proceedings by the Supreme Court. (Fla.App. Rule 9.520)

RULE 23. SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceedings shall be issued as follows:

(a) **Judicial Qualifications Commission.** Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery, and for the appearance of any person before the Commission or any member, may be issued by any member or the General Counsel of the Commission, and be served in the

manner provided by law for the service of witness subpoenas in a civil action.

(b) **Contempt.** Any person who, without adequate excuse, fails to obey such a subpoena served upon him may be cited for contempt of the Commission in the manner provided in these rules.

RULE 24. CONFIDENTIALITY OF PROCEEDINGS

(a) Until formal charges against a judge are filed by the Commission with the Clerk of the Supreme Court of Florida, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Commission with said Clerk of such formal charges against a judge, such charges and all further proceedings before the Commission shall be public.

(b) All notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked "confidential".

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, subject matter or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

(d) Violation of these Rules by a member of the Commission shall subject him after written notice and hearing, to removal from office by an affirmative vote of seven (7) members of the Commission and shall constitute contempt of the Commission which may be enforced by appropriate proceedings in the Supreme Court of Florida.

RULE 25. INTERESTED PARTY

A judge who is a member of the Commission or of the Supreme Court shall be disqualified from participation in such

capacity in any proceeding involving his own discipline, retirement or removal.

RULE 26. DISQUALIFICATION OF MEMBERS OF THE COMMISSION

(a) Whenever a judge against whom formal proceedings have been instituted, as provided in these Rules, shall make and file with the Commission an affidavit that he fears he will not receive a fair hearing before the Judicial Qualifications Commission on the charges because of the prejudice of one or more members of the Commission against him, and the facts stated as the basis for making the said affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not of kin to the judge or his attorney, or if any member of the Commission shall voluntarily recuse himself, such member or members of the Commission shall proceed no further therein and shall be disqualified form hearing said charges. Such affidavit shall state the facts and the reasons for the belief that any such prejudice exists, shall specify the member(s) of the Commission allegedly prejudiced, and shall be filed not more than 15 days after service of the Notice of Formal Charges upon the judge charged. The Commission shall make ad hoc appointments of a person or persons to take the place of the member or members of the Commission so disqualified, but each member so disqualified may participate in the action of the Commission in making such ad hoc appointments. Each ad hoc appointee shall be from the same category as the disqualified member(s) set forth in Section 12(a) of Article V of the Constitution of the State of Florida. The judge may within 15 days after receiving notice

of any ad hoc appointment, file a like affidavit as to said appointee which shall be supported in substance by affidavit of two citizens as set forth above, in which event said ad hoc appointee shall not be disqualified on account of alleged prejudice against said judge unless said appointee admits that it is then a fact that he is prejudiced against said judge, or unless a majority of the Commission, which may include any ad hoc appointee, holds that said

appointee is prejudiced against the judge: in which event the same ad hoc appointment procedure set forth above shall be followed until a qualified person has been appointed.

(b) A judge moved against by the Commission may, by affidavit, suggest the disqualification of a member or members of the Commission unsupported by two citizens, but in such event the determination of the matter of disqualification shall be by majority vote of the Commission unless the person sought to be disqualified voluntarily recuses himself.

RULE 27. CONTEMPT

Should any witness fail, without justification, to respond to the lawful subpoena of the Commission or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding of the Commission, a motion may be filed in the name of the Commission before the Circuit Court of the County in which the contemptuous act was committed, alleging the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of an alleged contempt of the Commission. Such motion shall pray for the issuance of an order to show cause before the Circuit Court why the Circuit Court should not find him in contempt of the Commission and he should not be punished by the Court therefor. The Circuit Court shall issue such orders and judgments therein as the Court deems appropriate.

DOCUMENT 29

Listing of Judicial Disciplinary Codes and Procedures by State

State	Applicable Procedure	Applicable Code
Ala.	Ala. Const. Art. VI, §6.17	Cannons of Judicial Ethics
Ariz.	Ariz. Const. Art. VI.1, §1-6	Code of Judicial Conduct
Ark.*	Ark. 5.A. §16-10-302	Ark. Code of Judicial Conduct
Cal.	Cal. Const. Art. VI, §8, §18 (See 537 p. 2d 898, 918 fn 22)	Cal. Code of Judicial Conduct
Colo.	Colo. Const. Art. VI, §23	Colo. Code of Judicial Conduct
Del.	Del. Const. Art. IV, §37	Del. Judges Code of Judicial Conduct
Ga.	Ga. Const. Art. VI, §7 ¶6	Code of Judicial Conduct
Idaho	Idaho Code Annot. 1-2101	Idaho Code of Judicial Conduct
Ill.	Ill. Const. Art. VI, §15 b-g Ill. S.Ct. Rule 61 et seq.	Code of Judicial Conduct
Ind.	Ind. S.A. 33-2.1-5-1 et. seq.	Code of Judicial Conduct
Iowa	Iowa C.A. 602.2101 et seq.	Iowa Code of Judicial Conduct
Kan.	Kan. S.Ct. R. 602-623	Code of Judicial Conduct
Ky.	Ky. S.Ct. R 4.000 et. seq.	Code of Judicial Conduct

La.	La. Const. Art. V, §25	Code of Judicial Conduct
Mass.	Mass. Gen. L.A. §211 C 1-11	Code of Judicial Conduct
Mich.	Mich. Const. Art. VI, §30	Code of Judicial Conduct
Minn.	Rules of Bd. on Judicial Standards	Code of Judicial Conduct
Miss.	Miss. Const. Art. VI, §177A	Code of Judicial Conduct
Mo.	Mo. Const. Art. V, §24	Code of Judicial Conduct
Mont.	Mont. Const. Art. VII, §11	Cannons of Judicial Ethics
NY	Rules of the Chief Adm. Judge 100.1 et. seq.	Judicial Conduct
N.C.	N.C. S.A. §7A-375 et. seq.	Code of Judicial Conduct
N.D.	N.D. Century Code, Ch. 27-23-01	Rules of Judicial Conduct
Ohio	S.C.R. for Gov. Judiciary of Ohio Rule 1 et. seq.	Code of Judicial Conduct
Okla.	Okla. Const. Art. VIIA, § let. seq.	Code of Judicial Conduct
Pa.	Pa. Const. Art. V, §18	Code of Judicial Conduct

R.I.	Gen. L. of R.I. Ch. 16, §8-16-1 et. seq. R.I. S.Ct. R. Art. VI, Rule 1	Code of Judicial Conduct
S.C.	S.C. S.Ct. R. 33, 34	Code of Judicial Conduct
S.D.	S.D. Codified Laws, Ch. 16, §1A-1 et. seq.	S.D. Code of Judicial Conduct
Tenn.*	Tenn. Code Annot., Ch. 5, §17-5-101 et. seq.	Code of Judicial Conduct
Utah	Utah Code Annot. §78-7-27 et seq.	Code of Judicial Conduct
Va.	Code of VA, Ch. 4.1, §2.1-37.1 et. seq.	Cannons of Judicial Conduct
Wash.	Rev. Code of Wash. Annot., §2.64.010 et. seq.	Code of Judicial Conduct
W.Va.	Rules of Judicial Disc. P. R1 et. seq.	Code of Judicial Conduct
Wyo.	Wyo. Jud. Supervisory Comm. Rules R1 et. seq.	Code of Judicial Conduct

* The procedure in Arkansas and Tennessee differs somewhat inasmuch as the final recommendation for discipline must be approved by the general assembly as opposed to the state's highest court.

93-713

CASE NO. _____

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME FIVE

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

INDEX TO APPENDIX

Document	Description	Page
	VOLUME ONE	
1	Opinion of the Florida Supreme Court In Re: Judge Graham	2
2	Findings of Fact, Conclusions of Law and Recommendation for Removal	19
3	Judge Graham's Proffer to an Empty Courtroom	63
4	Excerpts from the Record Demonstrating the Conduct of the JQC During the Proceedings	71
5	Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings	97
6	Excerpts from the Record Where Proffers were Denied	125
7	Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner	173
8	Affidavits Related to JQC Misconduct	180
9	Excerpts from the Record Supporting Reasons for Selective Prosecution	191

VOLUME TWO

10	Federal Questions Preserved	213
11	Excerpts from Deposition of County Court Judge Woodrow Beauchamp	359
12	Excerpts from Deposition of former Circuit Court Judge Harry Lee Coe	381

VOLUME THREE

13	Excerpts from Deposition of former Chief of Justice of the Florida Supreme Court Raymond Ehrlich	408
14	Letter from Committee on Standards of Conduct Governing Judges to Judge Graham dated June 4, 1992 (Exhibit 126 of Show Cause Response)	423
15	Excerpts from the Report of the Bench/Bar Commission, January 1993.	427
16	Opening Statement of Judge Graham	436
17	Closing argument for Judge Graham	445
18	Excerpt from Show Cause Response	557

VOLUME FOUR

18	Excerpt from Show Cause Response (Continued from Volume Three)	601
19	Excerpts from Judge Graham's Reply to Reply	655
20	Letter from Brad King to Florida Judicial Qualifications Commission with attached newspaper editorials	657
21	Notice of Formal Charges	666
22	Amendment to Notice of Formal Charges	688
23	Excerpts from transcripts of the proceedings	698
24	Excerpts from transcripts of the pre-trial conference	722
25	Excerpts from Transcripts of Proceedings Before JQC July 31, 1992 (Second Rule 6b hearing)	746
26	Answer to Affirmative Defenses and Motion to Strike Demand for Jury Trial	756
27	Order Granting in Part Motion of Limine and Limitation of Witnesses	759
28	Florida Judicial Qualifications Commission Rules	762

29	Listings of Judicial Disciplinary Codes and Procedures by State	776

VOLUME FIVE

30	Fourth Amended Motion to Dismiss	800
31	Florida Constitutional Provisions	867.5
32	Applicable Excerpts of the Florida Code of Judicial Conduct	874.5
33	Wisconsin Statutes	878.5
34	Public Response to JQC Proceedings Excerpts from Exhibit to Show Cause Response #174	884
35	Public Response to Formal Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108B	898
36	Public Response to Adverse Publicity Prior to Charges Against Judge Graham Excerpts from Exhibit to Show Cause Response #108A	907
37	Motion in Limine dated February 18, 1993	916.5
38	News Article, Citrus County Chronicle, Sept. 15, 1988 (Judge says some attorneys act goofy)	934.5

39	Motion for Continuance dated December 18, 1992	937.5
40	Motion for Continuance dated January 13, 1993	961.5
41	Resume of Judge Graham	971.5
42	Excerpts from Transcript of Proceedings before the JQC May 18, 1992 (First Rule 6b hearing)	975.5
43	Motion for Continuance dated February 10, 1993	983.5

VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

DOCUMENT 30

Fourth Amended Motion to Dismiss

Note: Pages 4-38 have not been reproduced here as they are identical to the "Background" statement already reproduced as an excerpt from Judge Graham's Show Cause Response found at (A 564)

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A
JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM CASE NO. 80,273
CITRUS COUNTY COURT JUDGE
_____/

FOURTH AMENDED

MOTION TO DISMISS

Comes now Gary G. Graham, County Court Judge, and moves the Florida Supreme Court (hereinafter the "Court") to dismiss the Formal Charges and all subsequent amendments thereto filed against him by the Florida Judicial Qualifications Commission (hereinafter the "Commission" or "JQC") in the above styled cause.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z. The Exhibits are contained in 7 volumes labeled "Exhibits to Show Cause Response and Third

Amended Motion to Dismiss" on File with the Florida Supreme Court, Case No. 80,273.

GROUNDS

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process.

Rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State and Federal procedural due process rights of the individual

Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 4J, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to all charges the JQC has violated the State and Federal procedural due process rights of the Respondent by not only refusing to allow him to present evidence or argument on his Eleven Affirmative Defenses (which include among other things the above stated constitutional challenges) but also refused to allow discovery of the facts which would be necessary to support the Respondent's affirmative defenses or the above stated constitutional challenges. It did so by quashing the deposition and trial

subpoenaes of past and current members of the Commission, its office staff, its special and general counsels, its investigator, and numerous other witnesses having information related to these constitutional challenges.

7. As to all charges the JQC is an

unconstitutional body and its rules are an unconstitutional violation of the Respondent's Federal and State due process and free speech rights for the reasons stated in the Respondent's Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B and attached hereto as Exhibit 172.

- Page 39 -

AS TO GROUND ONE

As a result of the above stated background, the local Bar, the local press, the local politicians, and the Sheriff do not like him and want his removal.

The attorneys want him out because he won't have secret pretrial conferences, he won't rubberstamp their plea bargains, and he won't tolerate misconduct in Court.

The local press wants him out because

he won't let defendants come to Court drunk, cursing, or lying. He won't let them win all their cases in Small Claims Court and won't fine anyone $350.00 for stealing a 50¢ newspaper.

The local politicians want him out because on two

occasions he has put their children in jail (County Commissioner Skip Hudson's son was sentenced to 30 days in jail when during sentencing he told the Court that it was none of its business who he bought his dope from, and County Commissioner Alex Griffin's daughter was sentenced to jail when she violated probation for willful and wanton reckless driving and refused to offer any reason for her violation).

Circuit Judge Thurman wants him out because he won't let him exercise illegal jurisdiction over misdemeanor jail sentences

or be vulgar in Court.

Circuit Judge Edwards wants him out because he won't let him forget his part in the Dameron debacle, won't let him build million dollar Court facilities without the public's knowledge, and won't excuse his friends from jury duty.

Sheriff Dean wants him out because he won't let criminals out of jail to solve his jail under spacing problems, won't let him build million dollar Court facilities without the public's knowledge, and won't let him release defendants from jail because they have friends in the Sheriff's Department.

State Attorney King wants him out because he won't let him be rude in Court or lax in the filing of informations, he will not let 6th-time DUI defendants be prosecuted in misdemeanor Court without some explanation, and he helped defeat his

buddy Oldham in the 1984 election.

The newspapers in particular have placed Respondent

under a hostile, twisted, warped, and microscopic examination including numerous vicious editorials based on one side of the story, and calling on many occasions for the JQC to remove him (See composite Ex 107).

The people of Citrus County overwhelmingly reelected him despite the united opposition of the aforementioned groups and want him to stay (See composite Ex 108A, pre-complaint letters of support, composite Ex 108B, post-complaint letters of support and composite Ex 108C post-complaint demonstrations of support).

The JQC has filed a Notice of Formal Charges alleging some 31 acts of misconduct, including everything from false allegations

of ex parte communications (See Ex 109, charge 6B) to stating in open Court that "You cannot separate morality from the law!" (See Ex 109, Charge 2D).

The Respondent Judge received an initial Notice of Investigation on April 28, 1992 (See Ex 110). He was "invited" to appear before the JQC on May 18, 1992, to explain eight charges of misconduct (See Ex 110, P 5), giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to incidents some <u>three</u> years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrying on all of his full-time duties as the sole County Court Judge for Citrus County (See Ex 106, P 11,

L 16).

Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Rhodes, Counsel for the Commission. Mr. Earle, a former Chairman of the JQC, had advised Respondent that such motions were routinely granted. The JQC denied the motion (See Ex 111).

Respondent traveled from Inverness, Florida, to West Palm Beach on May 18, 1992, to renew his motion for a continuance (See Ex 106, P 5). The Motion was then granted, but only for the reason that the Commission wanted additional time to charge the Respondent with additional misconduct (See Ex 106, P 18, L 70). Respondent's hearing was continued to July 31, 1992.

On May 27, 1992, Respondent requested that the JQC schedule approximately six hours for the hearing scheduled for July 31, 1992 (See Ex 112).

On June 29, 1992, Respondent received an Amended Notice of Investigation (See Ex 113). At that point the Respodent

had only 32 days to complete his preparation on the original eight charges and to begin preparation on 25 additional charges some of which related back to incidents four years in the past and which also required the difficult transcription of electronic court reporting tapes.

On the same day, Respondent received a letter advising him instead of having 6 hours to explain or refute 8 charges, he would have 3 hours to explain or refute the amended charges. Thus, if Respondent talked non-stop without interruption or questioning, he was allowed 5.6 minutes to explain or refute each of the charges.

Furthermore, when Respondent appeared at the purported Rule 6(b) hearing, he was

quickly admonished not to waste any time on preliminaries lest he might cut into his allotted time (See Ex 115, P 9, L 19).

During the hearing Respondent was not allowed to bring an assistant into the room (Ex 115, P 6, L 13), and was not allowed time to prepare a seating diagram (Ex 115, P 9, L 19), thus being forced to listen and prepare the diagram at the same time (Ex 115, P 11, L 2).

Respondent was told how he was going to make his presentation (Ex 115, P 11, L 5) to which the Respondent objected (Ex 115, P 11, L 19).

Given the stated background surrounding Respondent's charges, Respondent was very concerned that individuals from the press might be members of the JQC. This concern was the result of a former member of the JQC advising Respondent

that when the JQC was first created that an informal agreement was made that the press would always be represented. This deal was supposedly made to alleviate objections by the press at the time the JQC was created that the meetings prior to formal charges would be secret.

The JQC would not introduce the profession of two of its members, Mahon and Tate, even though it made known the profession of every other member of the Commission (Ex 115, P 12, L 14 thru L 16). Nor would the JQC answer the direct question if there was anyone on the Commission who had experience in the newspaper business (Ex 115, P 13, L 16).

Subsequently the Executive Director of the JQC provided the newspapers and the President of the Citrus County Bar Association with this information thus clearly demonstrating its sensitivity to

the pressure from the press and the Bar (See Ex 137 and 138).

Considering the background of unfair, hostile news coverage, Respondent was also concerned that members of the Commission might have been prejudiced against Respondent either through personal contact from representatives of the press (perhaps including press representatives who are members of the Commission) or by exposure to the numerous unfair and twisted news articles and editorials written about him.

The JQC refused to answer questions regarding these concerns (Ex 115, P 13, L 16 thru P 14, L 24 and P 20, L 17). Respondent later obtained proof that indeed this had

occurred (See Ex 132).

Considering the background of the legal community where a Florida Supreme Court

Justice got directly involved in filing an ethical complaint at the secret request of someone who appears from the record to be another judge, Respondent was concerned that another judge, possibly a Supreme Court Justice, might have prejudiced members of the Commision (Ex 43).

The JQC refused to answer questions regarding these concerns (Ex 115, P 14, L 25 thru P 15, L 5 and P 20, L17).

Considering the background of petty, vindictive politics experienced by Respondent at the hand of the Sheriff, the State Attorney, and the Circuit Judges, Thurman and Edwards, Respondent was concerned that these individuals or other politicians might have prejudiced the Commission against the Respondent.

The JQC refused to answer questions regarding these concerns (Ex 115, P 15, L 6 and P 20, L 17).

Subsequently, a politician, Mr. Andy Martin, seeking election to the 5th Congressional District admitted to complaining to the JQC **based solely on newspaper articles he had read** (Ex 116).

Respondent has also verified that two of the complaints resulting in formal charges were filed by Brad King (See Ex 135 and 136), a bitter political enemy who had come to the judge's office and as the State Attorney, threatened to wage a "war" against the Respondent.

Respondent then proceeded to proffer a series of

questions consistent with the typical questions used to voir dire a jury to obtain impartial triers of fact. The JQC refused to answer these questions (Ex 115, P 15, L 19 thru P 19, L 2, and P 20, L 17).

One particular concern of the

Respondent, considering the fact that he has been charged with being too tough on a contemnor (Ex 109, charge 2J) was that someone on the Commission might have a grudge against too-tough judges (Ex 115, P 18, L 15). Subsequently, Respondent learned that investigative counsel for the JQC, Mr. Terrance Bostic, has recently been sentenced to jail for Contempt of Court (Ex 117).

Considering the nature of charges against Respondent involving his publicly stated purpose of removing the politics, favoritism, and friendship he perceived in the Court system, especially with respect to attorneys and influential people, Respondent is especially concerned about being tried by attorneys, judges, and other influential people, some of whom may have received favored treatment as a result of their status.

The JQC refused to answer questions regarding these concerns (Ex 115, P 19, L3 thru 17, and P 20, L 17).

Respondent made and preserved his substantive and procedural due process arguments for the record (Ex 20,

- Page 47 -

P 20, L 19 thru P 28, L 13).

Later in the hearing one of the Commissioners responded to these objections (Ex 115, P 42, L 2). The Commission would not allow the Respondent to fully reply on the record (Ex 115, P 44, L 6).

For reasons unknown to the Respondent, two Commissioners have been replaced after voluntarily recusing themselves for prejudice under Rule 26 of the Florida Judicial Qualifications Commission Rules (Ex 118 and 119). Commissioner Frank, however, appears to have been very active in digging up information on the Respondent Judge and

seems to have been especially troubled by Respondent's pending Federal lawsuit (See Ex 139). The rules of the JQC allow these admittedly prejudiced Commissioners to participate in the selection of their replacements.

Finally, at the end of the hearing Respondent advised the Commission that Sheriff Dean had made public the investigation of Respondent which under Rule 24 of the FJQCR was supposed to be confidential. Respondent asked the JQC for permission to respond. Instead of giving Respondent a simple yes or no answer, the JQC refused to answer (Ex 115, P 53 thru P 56, L 8).

The JQC has not sanctioned Sheriff Dean for the disclosure of these confidential proceedings.

Subsequent to this Rule 6(B) hearing the Respondent appeared on a local television

program and disclosed the possibility of charges being filed against him generally

defended himself, and requested help in the form of information related to his defense.

The JQC then added an additional 14 charges to its complaint including a charge that the Respondent's speech on the television program was unethical.

Based on the written complaints discovered during deposition, it is clear that the Florida JQC had years to consider the charges made against Respondent.

At least two attorneys and one investigator were provided headquarters at the Citrus County Sheriff's office and conducted investigations, gathered evidence, and prepared the case against Respondent.

In addition to the General Counsel for the Florida JQC, Mr. Roy T. Rhodes,

the two Special Counsels, Mr. Terrance A. Bostic and Ms. Alicia J. Schumacher, and their investigator, Mr. Stan Jacobson, the Florida JQC has employed attorneys in Miami, Florida, and Jacksonville, Florida.

The Florida JQC proceedings have forced Respondent into debt and that he does not have the means to match the State provided financial resources being used against him nor to hire an equivalent team of lawyers to prepare his defense.

During the depositions taken since the close of the pleadings on December 30, 1992, the deponents have refused to answer numerous critical questions. Furthermore, two critical deponents terminated their depositions without leave of Respondent or the deposition hearing officer.

- Page 49 -

Just prior to Respondent's hearing he discovered many facts related to his

defense which demanded additional discovery to perfect and he discovered a critical expert witness that he was theretofore unaware of and that he needed to develop and prepare for the hearing. The JQC refused Respondent a continuance.

Despite Respondent's best efforts numerous critical witness subpoenas remained unserved, prior to the hearing.

Despite his best efforts Respondent was unprepared for trial and was not able to make a good and proper defense when forced to a hearing on January 26, 1993, jsut 27 days after the close of the pleadings in what was then a 43 count accusation.

Respondent needed at least 120 additional days to prepare for the hearing. He shared this with the JQC, but was denied relief and forced to trial unprepared.

Respondent was disorganized, unprepared, and unable to make a good and proper defense

for the reasons previously stated.

The Florida JQC kept Respondent before it nine and ten hours per day for four days in January and four additional days in February 1993.

On one day the Respondent was only allowed twenty minutes for a lunch break.

The city police department notified the Respondent during the Florida JQC hearing that his vehicle had been burglarized and vandalized and requested that he respond to

the scene to secure his property and provide information. The Florida JQC refused to grant the Respondent a recess and proceeded with the taking of evidence in the absence of the Respondent as he responded to this emergency.

The Florida JQC twice charged the Respondent with contempt and threatened

that he would be put in jail:

a. Once for trying to clarify a question regarding permission to photograph a sleeping Commissioner, and

b. Once for taking too long to write a note concerning the Commission's refusal to allow a proffer.

The contempt proceedings were never had, the Respondent was never given an opportunity to defend himself and yet the JQC included in its Findings of Fact, Conclusions of Law and Recommendation for Removal that the Respondent was "contemptuous" during the hearings. (Page 23 of the Findings)

The prosecution rested its case on January 29, 1993. The Florida JQC dismissed 19 of the 41 allegations of misconduct substantiating Respondent's position that the charges were false, trivial and misdirected.

Nonetheless, the Respondent was required to waste his time and financial resources on the anticipated defense of these 19 unfounded and abandoned charges which further impeded his ability to prepare for the defense of those remaining.

At the close of the Florida JQC case, Respondent advised the Florida JQC that he would need 120 days from

January 29, 1993, to be prepared for his trial defense.

On January 29, 1993, the Florida JQC ignored the Respondent's request for 120 days and continued the case until February 23, 1993.

The Florida JQC further ordered the Respondent to have a complete list of witnesses and pre-marked exhibits available by February 12, 1993, with the extra sanction that any witness or exhibit not listed would

be excluded from admission into evidence.

Despite the short time provided, the Respondent delivered to Special Counsel for the Florida JQC a list of 473 witnesses and allowed him to inspect 551 marked and catalogued exhibits. This list of witnesses and exhibits was incomplete and Respondent was unable to call other important witnesses and present other important documents and tangible evidence.

Respondent remained in a state of unpreparedness to begin his defense on February 23, 1993, including but not limited to the fact that numerous critical witnesses remained unserved. Respondent feared that his state of unpreparedness would further delay him during the hearing and that he would be further held in contempt and jailed.

Subsequent to the close of the prosecution's case, the Respondent filed yet another Motion for Continuance directed

to the February 23, 1993, hearing date sharing the above stated concerns. It was denied.

Respondent advised the Florida JQC that the hearing of

his defense would require approxiamtely six months. The Florida JQC issued an order stating that "Four days have been requested for the conclusion of this hearing." At the beginning of the Respondent's case the Commission gave the direct order that "We are starting today and we are going to complete this hearing by Friday." (T, P 1473, L 6)

Respondent attempted to proffer an objection based on the Decisional Authority of U.S. vs. MacLain 701 F. Supp 1544, but the JQC would not allow his proffer. (T, P 1476, L 25)

Subsequent to January 29, 1993, the

Florida JQC had refused to execute trial subpoenas. Also subsequent to January 29, 1993, the Florida JQC had refused to accept witness pay deposits which are required by Florida Statute 92.151.

Respondent sought relief from the Florida Supreme Court and was denied. (Florida Supreme Court case number 80,708, requested relief item one.)

- Page 53 -

Subsequent to January 29, 1993, and prior to the resumption of the Florida JQC hearing related to the Respondent that the Respondent attempted the deposition of William F. Edwards, a critical witness in his case.

The deponent was rude, insulting, and uncooperative and refused with minor exceptions to answer the questions propounded to him.

The Respondent moved the Florida

Judicial Qualifications Commission to compel discovery but the motion was denied.

Without the deposition of this witness the Respondent was not only unable to defend himself but was unable to preserve a record on appeal for his claim that he is being selectively prosecuted for exercising his first amendment rights to freedom of speech.

During the hearings held in Inverness, Florida between January 29, 1993 and February 26, 1993 to consider various untrue allegations of unethical conduct filed against the Respondent by the JQC the JQC would not allow evidence or testimony related to the Plaintiff's affirmative defenses.

The affirmative defenses were as follows:

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State

and Federal Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judical Conduct is so vague that a

reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

THIRD AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida JQC Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

FOURTH AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal Procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

FIFTH AFFIRMATIVE DEFENSE

As to Charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

SIXTH AFFIRMATIVE DEFENSE

As to all charges occurring before the Respondent Judge's current term of

office, the JQC lacks jurisdiction for the reason that these widely publicized incidents

occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

SEVENTH AFFIRMATIVE DEFENSE

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited ex parte communications.

EIGHTH AFFIRMATIVE DEFENSE

The charges against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct as contemplated in Section 17(a)(3), Article V, Florida State Constitution. The conduct did not decend into rancorous personality

or verbal impropriety and represents a mares nest of trivial charges designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter jurisdiction.

NINTH AFFIRMATIVE DEFENSE

With respect to all charges occurring during the Respondent Judge's first term of office, the JQC has known the substance of these charges for years and delayed complaining of them until the evidence was old and cold and witnesses disappeared or died. The Respondent Judge is accordingly unable to defend himself and the Commission with respect to said charges and is estopped from proceeding by the theory of estoppel and latches.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the Respondent Judge

with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper editorials and threats of legal action against it.

ELEVENTH AFFIRMATIVE DEFENSE

The Notice of Formal Charges fails to allege facts sufficient to establish its jurisdiction over the subject matter or person of the Respondent Judge. Specifically, it fails to allege at the time of the alleged misconduct or at any other time that the Respondent was duly elected, qualified and acting County Court Judge in the State of Florida.

Due to these adverse rulings by the JQC, including a last minute ruling at trial that they would not be considered whatsoever,

the Respondent could not call his witnesses related to these affirmative defenses. The excluded witnesses included, but were not limited to:

1. Judge William F. Edwards, Circuit Judge
   Fifth Judicial Circuit of Florida

2. Judge John P. Thurman, Circuit Judge
   Fifth Judicial Circuit of Florida

3. Judge William T. Swigert, Circuit Judge
   Fifth Judical Circuit of Florida

4. Judge Woodrow O. Beauchamp, County Court Judge

   Levy County, Florida

5. Raymond Ehrlich, Former Chief Justice
   Florida Supreme Court

6. Harry Lee Coe, State Attorney and former Circuit Court Judge
   Thirteenth Judicial Circuit of Florida

7. Judge Harvey Goldstein, County Court Judge
   Dade County, Florida

8. Past and present members of the JQC, its employees, its Executive Director, its Special and General Counsels and numerous other witnesses related to Respondent's Affirmative Defenses.

Judge Edwards refused to answer numerous questions propounded to him during his deposition on February 11, 1993.

The JQC denied Respondent's Emergency Motion to Compel Judge Edwards to answer the questions refused at his deposition.

Judge Thurman also refused to answer numerous questions propounded to him during his deposition on January 18, 1993.

But for the above stated adverse evidentiary rulings and refusals to answer the Respondent had intended and would have proceeded to prove the following:

1) For several years Judge Edwards drove a red pick-up truck in and about Citrus County and routinely parked it in his official parking space at the Citrus County Courthouse conspicuously designated "W.F. Edwards, Circuit Court Judge."

2) Edwards' truck had a license plate attached to the

front bumper inscribed with the

slogan "Registered Coon Ass."

3) The plate also displayed the picture of a raccoon with its tail raised exposing a graphically detailed brown anus and black sphincter.

4) Citizens of Citrus County had seen the tag, knew who it belonged to and strenuously objected to it.

5) Judge Edwards presided over a civil case between former baseball player Ted Williams and one of his business partners named Vincent Antanucci.

6) During a case management conference in that case Edwards made a statement to Antanucci that "there'll always be people like you around, but let's face it there's only one Ted Williams."

7) Based on this statement and others made by Edwards at the proceedings Antanucci's attorney, George Evans, filed a motion to disqualify Judge Edwards.

8) Based on the Motion to Disqualify, Edwards charged Evans with direct criminal contempt of court, found him guilty and sentenced him to six months in County Jail.

9) The judgment and sentence of George Evans was reversed on appeal.

10) Judge Thurman routinely presided

over official circuit court proceedings in a plaid shirt, no robe, and sometimes without even a tie.

11) Judge Thurman has referred to defendants in open

court as "sport" and on one occasion told an assistant state attorney that his case was "chickenshit."

12) Judge Thurman without jurisdiction and ex-parte released inmate Ray Bruce Riggs from the Citrus County Jail. Riggs was later reincarcerated.

13) Judge Thurman without jurisdiction wrongfully released inmate Michael Mitchell from the Citrus County Jail. The release of Mitchell was subsequently reversed by Judge Raymond T. MacNeal and Mitchell was re-incarcerated.

During the depositions of former Justice Ehrlich, former Circuit Judge Coe and Judge Swigert hypotheticals based on the actual conduct of Judges Edwards and Thurman as set forth in paragraphs 1 through 13 were presented to the deponents for their consideration.

The conduct as hypothetically presented was considered to be unethical in the opinion of these deponents.

In particular the conduct of judge Edwards (presented to Judge Swigert using different names for the individuals involved) was described by Swigert as unethical, proof that the judge involved was unfit to be a judge and that it bordered on criminal conduct. (Deposition of Judge Swigert pages 264 through 270.)

The misconduct of Edwards and Thurman has been reported to the JQC, either directly through the pleadings of the Respondent, by written complaint of citizens of Citrus County

or by disclosure to counsel representing the JQC.

But for the adverse evidentiary rulings of the JQC the Respondent had intended and

would have also proved the following:

1. Judge Swigert engaged in a ex parte communication with Justice Raymond Ehrlich concerning alleged unethical conduct on the part of Attorney Charles Horn.

2. Judge Swigert removed the Plaintiff from his criminal court duties based on false and unsubstantiated hearsay and letters containing false, misleading and scandalous statements. He did so without due regard to the status of the Respondent as an elected public official and without exercising due care in substantiating the facts upon which his decision was based.

3. As a result of Swigert's grossly negligent conduct as described in numbers 1 and 2 the people of Citrus County have been deprived of the services of their duly elected County Court Judge and the Citrus County Court has been thrown into a state of disorganization and disarray.

The misconduct of Judge Swigert has been reported to the JQC directly through the pleadings of the Plaintiff and by written complaint of a citizen of Citrus County. His misconduct has also been disclosed to counsel for the JQC.

But for the adverse evidentiary rulings of the JQC the

Respondent intended to call Judge Beauchamp and Judge Goldstein and would have proved by their testimony the following:

1. Judge Beauchamp has admitted to performing weddings in his office at the Courthouse during working hours and has accepted gratuities for these services.

2. The Committee on standards of Conduct Governing Judges published a written opinion that such conduct is unethical. (See Exhibit D attached)

The misconduct of Judge Beauchamp has been disclosed to counsel for the JQC.

But for the adverse evidentiary rulings of the JQC the Plaintiff had intended and would have proved that despite the fact that the egregious unethical misconduct of Judges Edwards, Thurman, Swigert, Ehrlich and Beauchamp have been reported to the JQC that formal charges have not been filed

against them. The Respondent would have argued that they have not been charged because they have not upset attorneys, politicians or newspapers by speaking out against wrongful conduct in the Citrus County justice system. (See transcript of opening statement made to the JQC by Respondent prior to the JQC's ruling that it would not allow affirmative defenses, Exhibit I attached.)

But for the adverse evidentiary rulings by the JQC the Respondent intended to call approximately 100 other judges to testify in the same manner as deponents Swigert, Coe,

Beauchamp and Ehrlich.

Judge Harvey Goldstein has been a member of the Ethics Committee for approximately 10 years.

Goldstein failed to appear for his

deposition scheduled for January 19, 1993. At the time of his non-attendance the subpoenae for his deposition had been served, had not been quashed, and was legally binding.

The JQC quashed the subpoenae duces tecum for trial, served upon Goldstein.

The Ethic's Committee had rendered official opinions to the Respondent in which the committee members have been split as to the propriety of the conduct propounded to them by the Plaintiff.

But for the adverse evidentiary rulings by the JQC, and the non-appearance of Goldstein at his deposition, the Respondent had intended to call Goldstein and would have proven the following:

1. That indecisive and split decisions regarding the Florida Code of Judicial Conduct were common and that there was often uncertainty and disagreement among the committee experts as to the meaning of the code.

2. That there are actions currently in progress to either substantially change or replace the Florida Code of Judicial Conduct with a more definitive and understandable code.

But for the adverse evidentiary rulings of the JQC the

Respondent intended and would have proven that the Florida Code of Judicial Conduct is so vague that most judges do not understand it.

Based on the deposition of former Chief Justice Raymond Ehrlich Respondent had a good faith belief that a communication regarding Respondent may have occured between Judge Swigert, Judge Edwards, Spike Fitzpatrick or some other individual unfavorably disposed against the Respondent and a justice of the Florida Supreme Court. This was based on his admission that just such a communication had occured regarding the ethical complaint filed against Attorney

Charles Horn in the Fifth Judicial Circuit.

But for the adverse evidentiary rulings by the JQC Respondent would have attempted to prove that this conduct occurred with respect to other accused judges as well and that it violated the due process and free speech provisions of the Federal and State Constitutions.

But for the adverse evidentiary rulings by the JQC the Respondent would have attempted to discover and disclose that a Justice of the Florida Supreme Court contacted the JQC and encouraged prosecution of Judge Graham explaining the cavalier attitude with which it has proceeded against him.

During the hearing the JQC denied the Respondent the opportunity to call 250 witnesses to refute allegations that he had demonstrated a pattern of rude and arrogant conduct. These included jurors,

witnesses, victims, police officers and other citizens of the county. The Commission arbitrarily

limited the Respondent to 3 character witnesses. At previous hearings as many as 49 character witnesses had been allowed In re Kelley (238 So2d 565, 578 (Fla. 1970)

The Commission then found the Respondent guilty of a pattern of misconduct based on the testimony of its own 6 witnesses all of which were shown to have a bias against Respondent.

The Commission also excluded forty witnesses who would have testified to the politics and favoritism in the Citrus County justice system and eighteen witnesses to testify to attorney misdeeds. It then found the Respondent guilty of falsely stating that politics and favoritism existed and that he had improperly admonished attorneys.

During the proceedings various Commissioners read newspapers, studied personal calendars, giggled, talked, audibly yawned, slept, and laughed at the Respondent. The Commission refused to allow approximately 10 citizens who had watched the proceedings to testify and verify this conduct.

The Respondent has a videotape verifying some of this conduct.

The Commission further excluded approximately 600 items of documentary evidence and approximately 200 video tapes. This evidence was excluded because the Commission had pre-ordained that the Respondent's case would last no more than 4 days.

Due to the adverse procedural and evidentiary rulings the Respondent was unable to preserve a factual record for

appeal either to this Court or the U.S.

Supreme Court.

During the proceedings the JQC Chairman allowed the testimony of witnesses who had violated the rules of sequestion, he berated, ridiculed and insulted the Respondent accusing him of misconduct and criminal contempt. He did so in the presence of the Commissioners, the jury in the case.

During the proceedings the Commissioners who were the jurors commented on the evidence and cross examined the Respondent's witnesses.

The Commission also allowed the Sheriff to physically push Respondent's assistant off an elevator and its General Counsel to shove the Respondent during the proceedings in full view of the Commission and the public.

It also ordered the Respondent to make proffers of law and argument to an empty courtroom.

Furthermore there were literally dozens of motions filed in this case by witnesses, the Commission and the Respondent. These motions were uniformly decided by the Commission without notice to the Respondent, without a hearing and without an opportunity to argue either the merits of the facts or the law. In one particular incident the Chairman informed the Respondent that he had won his motion prior to informing him that he had filed it!

> "Procedural due process, that is, the element of the due process provisions of the Fifth and Fourteenth Amendments which relates to the requisite characteristics of proceedings seeking to effect a deprivation of life, liberty, or property, may be described as

> follows: one whom it is sought to deprive of such rights must be informed of this fact (that is, he must be given notice of the proceedings against him); he must be given an opportunity to defend himself (that is, a hearing); and the proceedings looking toward the deprivation must be essentially fair."

In re Kelley at page 571

Furthermore, during the hearings the Commission made two rulings regarding the issues of the Respondent exercising the constitutional protection of the 5th Amendment and his hearing room conduct during the proceedings.

The Commission ruled that Respondent's conduct would not be considered:

Any similarity between the hearing that was provided the Respondent and an "Essentially fair" proceedings was purely coincidental.

> THE CHAIRMAN: No. The Chair is going to stand by his ruling. His conduct as -- whatever occurred in this courtroom other than as testimony and/or evidence will not be considered by the Commission. Please proceed.
> (T, P7, L5 of closing)

The Commission also ruled that the Respondent's exercise of his 5th Amendment Rights would not be considered.

JUDGE GRAHAM: Mr. Bostic keeps saying over and over again, "Well, why doesn't the judge just take the witness stand and tell his side of the story?" You don't how much I'd like to do that. I would love to do that. But it's not my burden,

- Page 67 -

first of all, and it's improper for him to say that it's my burden to disprove the charges.
THE CHAIRMAN: Judge -----
JUDGE GRAHAM: It's his burden -----
THE CHAIRMAN: Judge, excuse me. That's not an argument. Whether or not you take the -----
JUDGE GRAHAM: But he's making it an argument.
THE CHAIRMAN: But, I mean, I'm not paying attention to that. You have the right to go on the stand or not. I mean -- and if you don't go on the stand or not. I mean -- and if you don't go on it, it is not going to make one little difference to us, so let's move on.

(T P101, L15 of Pretrial Hearing)

Despite these trial rulings the Commission in its official Findings reported to the Florida Supreme Court stated the following:

"Respondent refused to testify in his own case . . . . ."

(Findings at Page 23)

It further stated:

"His actions, attitude, and activities during the hearing were often disruptive, scandalous, improper and contemptuous."

(Findings at Page 23)

Furthermore the Commission in its Reply to Response to Order to Show Cause dedicated over seven pages of its pleading to criticizing Respondent's hearing conduct including once again the Respondent's invocation of the protection of the 5th Amendment which he invoked due to threat of filing perjury charges made by the State Attorney an admitted long time bitter political enemy of the Respondent who had once before falsely accused the Respondent of a crime. (See Background)

- Page 68 -

It is the Respondent's position that the JQC as it is currently authorized under

Florida Law and Procedure is incapable of providing him a fundamentally fair hearing, that because of the fundamental unfairness of the procedure his **evidence will not be admitted**, and that his **testimony will not be believed**.

Accordingly, the charges against him should be dismissed until such time as the State of Florida can provide procedural due process to the Respondent.

AS TO GROUND TWO

The JQC has formally charged the Respondent with 31 acts of misconduct (see Ex 109). Among other things the Respondent is charged with:

1. Stating that some attorneys were acting like children (Charge 1A).

2. Admonishing an attorney for abandoning a client on appeal (Charge 3A).

3. Requiring as a condition of probation that a drug defendant provide substantial assistance to law enforcement (Charge 2A).

4. Refusing to allow a defendant while on probation to live with his girlfriend, the victim of his crime (Charge 4C).

5. Stating that "You cannot separate morality from the law" (Charge 4C).

6. Admonishing a defendant not to repeat the conduct which got him in trouble (Charge 2G).

7. Requiring a drunk driver to obtain a bicycle for transportation while on probation (Charge 2H).

8. Requiring a woman charged with not getting her child to school to obtain a bicycle for herself and her child (Charge 2I).

9. Refusing to participate in a probation administration meeting in the presence of a news reporter (Charge 5A).

As to Item 1, Warren Burger, Chief Justice of the United States Supreme Court, stated in a Tulsa Law Review article that:

> Montaigne said, long ago, that an advocate is sometimes well advised to state his final proposition first. My final proposition can be roughly stated as follows: (1) the legal profession as a whole has a very poor standing; (2) there are many causes for this; some of them are the

incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and (3) there is something we can and ought to do about this as the English bar and bench did a century ago.

I find no pleasure in saying to you that the majority of lawyers who appear in court are so poorly trained that they are not properly performing their job, and that their manners, professional performance, and ethics offend a great many people. Those who do not accept these harsh premises will not accept the proposal I intend to make.

On the most favorable view expressed, seventy-five percent of the lawyers appearing in the courtroom were deficient by reason of poor preparation, inability to frame questions properly, lack of ability to present expert testimony, lack of ability in the handling and presentation of documents and letters, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues and lack of ability to make an adequate argument to a jury. Also very high on the list of deficiencies was the lack of an understanding of basic courtroom manners and etiquette, and a seeming unawareness of many of the fundamental ethics of the profession. Most top level members of the trial bar - all of you, I am sure had an apprenticeship or internship, however informal, under the guidance of experienced trial lawyers. We need not worry about you.

> Our problem is caused by the lawyers who occasionally and casually try a case but have never had proper
>
> - Page 70 -
>
> training in the fundamentals. These are the men who take five days to do what you would do in one day. These are the men who make trial judges cringe and sigh when they walk into the courtroom; the trial judge knows how such lawyers can convert the trial process into a shamble.
>
> The first and larger part of the defect is lack of adaptability and lack of adequate technical and practical training. The second category has to do with manners and ethics. Some of the studies made in recent years in the effort to understand the jury function give strong support to the observations of judges and lawyers. The things jurors seem to find offensive are the bad manners of lawyers who abuse witnesses, lawyers who snarl at each other across the counsel table, lawyerswho are discourteous or slovenly in the communications with the judge and the jury. (See Ex 120, P 1, 3, and 4.)

After some analysis, Justice Burger concluded that <u>too few trial judges exercise proper control of their own courtrooms</u> (See Ex 120, P 8).

United States Supreme Court Justice

Anthony Kennedy, commenting on the Bar in a speech to the American Bar Association in 1990, stated that, "We see shoddy practice in every court in the country, including the Supreme Court of the United States." (See Ex 121)

Respondent is charged, without quotation and without context, with stating that some attorneys were acting like children. In light of the more severe criticisms of our past and present Supreme Court Justices a reasonable person would not be put on notice that the alleged statements were proscribed.

As to Item 2, the Federal Courts have been so offended

by attorneys abandoning their clients on appeal that they recently amended the Federal Rules of Criminal Procedure to require them to remain on their cases unless excused

by the Court (See Ex 122 and 123).

The Oath of Admission to practice law in Florida requires each attorney to swear under oath that he ". . . will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice . . ." (See Ex 124).

As to Items 3 through 9, they are either such fundamentally widespread practices, such as substantial assistance, or are of such a well-founded and appropriate nature that a reasonable person would not be put on notice that the sentences imposed would be proscribed.

Furthermore, Respondent is charged with stating that an Assistant Public Defender falsified a record on appeal (<u>which she did</u>). Respondent had for several years tried to end the use of electronic reporting in County Court which was the principle

reason for the conflict forming the basis of this charge. (The Defense Attorney's secretary transcribed an electronic recording, the Defense Attorney approved it, it was false, when notified of the problem the Defense Attorney attempted to prevent the record from being corrected.)

Having tried several ways to end this practice, Respondent was considering filing a lawsuit with the Florida

Supreme Court. Fearing charges of unethical conduct, but uncertain because of the vagueness of the Florida Code of Judicial Conduct, Respondent wrote to the Committee on Standards of Conduct Governing Judges, a Committee of Judges who are experts in judicial ethics (Ex 125).

Three of the experts said that Respondent would be unethical not to file a lawsuit. Three said he would be unethical

if he did. Four said they didn't want to answer! (Ex 126)

On another occasion, the same Committee advised the Respondent that he could speak on behalf of establishing a Children's Services Council in Citrus County. The Committee advised Respondent he could do so as long as he did <u>not become active in the fund raising aspect of the venture</u> (Ex 127 and 128).

Children's Services Councils as authorized by Florida Law do not participate in "fund raising". They are a taxing body of local government. It is impossible to speak on behalf of the establishment of a taxing body without talking about money, taxes, and what they will be used for. Respondent, who had been working hard toward this worthwhile goal, stopped all participation because of the Committee's vague and irrational opinion.

Evidently a Chief Judge of the First District Court of Appeal was confused by the Florida Code of Judicial Conduct on a similar issue. On page two of the Committee's response

- Page 73 -

half of the **experts** told him it was ethical to sit on a bond committee and the other half said it would be unethical (Ex 129).

When Respondent first took office he asked the Committee on Standards of Conduct Governing Judges if as the only County Judge in Citrus County he could rent office space to the Public Defender's office.

Seven **experts** said it would be unethical. Two said it would not (Ex 130).

If the experts can't agree on what the Florida Code of Judicial Conduct means, how then can the Judges of the State be guided by it? Obviously, it is so vague as written and applied as to violate the

substantive due process rights protected by the State and Federal Constitutions.

AS TO GROUND THREE

The Respondent incorporates by reference the factual circumstances outlined in Ground One above.

In summary, the Respondent had 32 days to prepare for 25 additional charges of misconduct involving events some of which related back to incidents four years in the past. He was also limited to 5.6 minutes per charge to explain 32 separate and complicated charges.

Respondent objected to the above stated facts and circumstances and refused to participate in what was an obviously superficial and unreasonable "opportunity" (Ex 115, P 39, L 10).

The JQC is required, by its own rules, to afford a Respondent Judge a **reasonable**

opportunity to make a statement before the Commission to explain, refute, or admit the conduct under investigation (FJQCR 6b). The JQC having failed to provide a reasonable opportunity as required by its own Rules thus violated the procedural due process rights of the Respondent and cannot proceed with formal charges unless and until it complies with its own Rules. Having failed to abide by its own Rules, the JQC denied Respondent his procedural due process rights protected by both the State and Federal Constitution.

AS TO GROUND FOUR

The JQC has formally charged the Respondent with 31 acts of misconduct. The Commission on at least two occasions met to consider Respondent's case. Present at both hearings was Commissioner Freeman (Ex 106, P 1 and 115, P1) and at one hearing Commissioner Frank (Ex 106, P 1). It is

a reasonable assumption that during the May 18 meeting and subsequent to the July 31 meeting the Commission discussed in secret and ex parte the Respondent's case (Ex 106, P 18, L 7 and Ex 109, P 1). It is reasonable under the FJQC Rules to believe that prior secret and ex parte discussions were had concerning Respondent's case and involving Commissioners Frank and Freeman.

At the July 31 meeting Commissioner Freeman voluntarily recused himself for prejudice (Ex 115, P 47, L 16).

- Page 75 -

Subsequently Commissioner Frank recused himself for prejudice (Ex 117).

It is the Respondent's position that where two of thirteen members on a Commission participate in the investigation and discussion of a Respondent Judge's case including meetings for the purpose of filing of Formal Charges, knowing that they are

prejudiced against the Respondent, that State and Federal due process rights of the Respondent have been violated.

AS TO GROUND FIVE

The JQC has formally charged the Respondent with two counts of improper public statements made in his capacity as an elected public official.

Charge 1A states that:

> On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.
>
> The news report complained of is attached hereto as Ex 28.

The speech complained of is the type of speech which is not only required by Canon 1 of the Florida Code of Judicial Conduct but is also closely protected by the First Amendment of the United States Constitution and Article One, Section Four,

of the Florida State Constitution.

AS TO GROUND SIX

The Respondent incorporates by reference the factual circumstances outlined in Ground One above.

AS TO GROUND SEVEN

The Respondent incorporates by reference the facts contained in his Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida Case Number 93-137-CIV-T-17B.

Wherefore based on the above stated factual basis and the arguments of law contained in the Memorandum of Law in Support of Fourth Amended Motion to Dismiss, the Florida Judicial Qualifications Commission and the Florida Code of Judicial Conduct should be declared to be unconstitutional and the charges against the Respondent should be dismissed.

Respectfully submitted,

HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Square,
Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, this 1st day of June 1993.

Gary G. Graham

A 867.5

DOCUMENT 31

Florida Constitutional Provisions

Article V, Section 12

Discipline; removal and retirement. --

(a) There shall be a judicial qualifications commission vested with jurisdiction to ~~in~~vestigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the reprimand of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such a reprimand. The commission shall be composed of:

(1) Two judges of district courts of

appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by judges of those courts;

(2) Two electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

(3) Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(b) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a justice or judge shall be eligible for state judicial office so long as he is a member of the commission and for a period of two years thereafter. No member of the commission shall hold

office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may participate in his own campaign for judicial office and hold that office. The commission shall elect one of its members as its chairman.

(c) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(d) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by the majority vote of the membership of each house of the

legislature, or by the supreme court, five justices concurring. Until formal charges against a justice or judge are filed by the commission with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the commission with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public. The commission may with seven members concurring recommend to the supreme court the temporary suspension of any justice or judge against whom formal charges are pending.

(e) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of reprentatives

or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(f) Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes wiht the performance of his duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing

of a formal proceeding and upon request of the commission, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(g) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment and to the power of suspension by the governor and removal by the senate.

(h) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the Judicial Qualifications Commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of

the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

A 874.5

DOCUMENT 32

Applicable Excerpts of the Florida Code of Judicial Conduct

PREFACE

Under Section 12(a), Article V of the Florida Constitution the Judicial Qualifications Commission is charged with the responsibility of enforcing these standards.

CANON 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should

require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning

the law, the legal system, and the administration of justice.

A 878.5

DOCUMENT 33

Wisconsin Statutes

Wisconsin Statutes

§ 448.02 (1)

No person shall practice or attempt to hold himself out as authorized to practice medicine, surgery, or osteopathy, or any other system of treating the sick as the term "treat the sick" is defined in s. 445.01 (1) (a), without a license or certificate of registration from the examining board, except as otherwise specifically provided by statute.

§ 448.17

The examining board shall investigate, hear and act upon practices by persons licensed to practice medicine and surgery under s. 448.06, that are inimical to the public health. The examining board shall have the power to warn and to reprimand, when it finds such practice, and to institute criminal action or action to revoke license when it finds probable cause therefor under criminal or revocation statute, and the attorney general may aid the district attorney in the prosecution thereof.

§448.18 (2)

(2) Upon verified complaint in writing to the district attorney charging the holder of a license or certificate of registration from the examining board or chiropractic examining board with having been guilty of immoral or unprofessional conduct or with having procured his certificate or license by fraud or perjury, or through error, the district attorney shall bring

civil action in the circuit court against the holder and in the name of the state as plaintiff to revoke the license or certificate. The court may appoint counsel to assist the district attorney and either party may demand a jury. No one shall be privileged from testifying fully or producing evidence, but he shall not be prosecuted or subject to penalty on account of anything about which he so does, except for perjury in so doing. If the court or the jury finds for the plaintiff, judgment shall be rendered revoking or suspending the license or certificate and the clerk of the court shall file a certified copy of the judgment with the examining board. The costs shall be paid by the county, but if the court determines that the complaint made to the district attorney was wilful [sic] and malicious and without probable cause, it shall enter judgment against the person making the complaint for the costs of the action, and payment of the same may be enforced by execution against the body as in tort actions.

§ 448.18 (7)

(7) A license or certificate of registration may be temporarily suspended by the examining board, without formal proceedings, and its holder placed on probation for a period not to exceed 3 months where he is known or the examining board has good cause to believe that such holder has violated sub. (1). The examining board shall not have authority to suspend a license or certificate of registration, or to place a holder on probation, for more than 2 consecutive 3-month period. All examining board actions under this subsection shall be subject to review under ch. 227.

§ 15.405

(7) Medical examining board. There is created a medical examining board in the department of regulation and licensing. The medical examining board shall consist of 10 members appointed for staggered 4-year terms. Seven of the members shall be licensed doctors of medicine; one member shall be a licensed doctor of osteopathy; and 2 members shall be public members.

§ 227.20 Scope of review

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency

has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further

proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

DOCUMENT 34

Public Response to JQC Proceedings
Excerpts from Exhibit to Show Cause Response, #174

The following are seven representative letters of hundreds sent in support of Judge Graham after the close of the televised JQC proceedings.

A 885

March 25, 1993

Governor Lawton Chiles
Tallahassee, Florida

Dear Sir:

I am a resident of Citrus County. I am retired and from New York originally. There are many things said about New York but I never heard of alynching there to compare with the farce that is going on here.

I have watched the "trial" of Judge Graham on T.V. I can't say anything good about it. The panel consists of a pack of fools at least that is the way they appear on the screen. They laugh - yawn - look at the ceiling - it made me mad enough to send this letter to you.

I do not imagine that the judge never made a mistake, who hasn't? but the man is honest I do not think he could be corrupted.

He has stepped on some big toes here and it is open season on him. If he were to run for any office in this county I would vote for him.

I have no doubt that this farce has gone far enough and this witch hunt must

be brought to an end.

I have never sent a letter of this kind to anyone before. I am one of the silent majority but then again I never watched a lynching before.

Sincerely,
/s/Ciney Barhite
197 W. Sugarberry La
Beverly Hills, Fla 34465

A 887

March 20, 1993

Governor Lawton Chiles
The Capitol
Tallahassee Fl 32301-0001

Dear Governor Chiles:

First may I congratulate you on the admirable job you are doing under not only tremendous political pressure, but acts of God.

Secondly, I would like to share with you my feelings (the same as many others) concerning the Judge Graham affair here in Citrus County.

I do not know if the Judge abused power or committed any crime, but according to our local newspaper, The Chronicle, he certainly has. I am not certain what they are going to do for headlines when this fracas is over.

The panel, and particularly the chairman are so biased that even those who are anti-Graham have commented on it. I am certainly a layman where the law is concerned, but the JQC conspicuously changes the rules where it serves their purpose to persecute the Judge (and I do mean persecute, not prosecute). Truly, Governor, the chairman has acted in a despicable manner during this whole trial. His body language and countenance vary to belittle Judge Graham nearly every time he testifies and he continually cites vague rules to trample on Judge Graham's testimony. This entire trial has been a travesty.

My brother, the late Jerry Thomas, who at one time was President of the Senate and later ran for Governor (perhaps you knew him), once told me that if I every saw political injustice to tell the top gun; hence this letter.

Good luck, governor.

Respectfully,
/s/R. L. Thomas

A 889

March 23, 1993

3030 S. Oleander Terr.
Inverness, FL 34450-6902

Governor Chiles,

There is a vendetta being waged against Judge Graham by our local newspaper, various lawyers, elected officials and some repeat court offenders.

As a resident and voter, I felt obligated to start observing Judge Graham's court demeanor and decisions. I found him to be inevitably courteous and fair. He was being crucified for being unapproachable for special favors for the "Powers-that-be."

Please let the voters be the deciding voice in this matter. The J.Q.C. jury was decidedly rude and biased from the beginning to the end.

The voters of Citrus County will feel disenfranchised if we are not allowed to have a voice in this decision.

Sincerely,

/s/ Anne Beggs

A 890

March 24, 1993

Governor Lawton Chiles
The Capitol
Tallahassee, FL 32301-0001

Dear Governor Chiles:

I am writing on behalf of our family and friends to voice our support for Judge Gary Graham of Citrus County.

My husband and I know Judge Graham and consider him an honest and fair man who is only trying to maintain some level of decency in our court system. We need Judge Graham (and more like him) in our courts and we, the people, will do everything possible to keep him as our judge.

I also want to voice our disgust for the way the JQC hearings went. We think it was a disgrace the way Mr. Reiter treated Judge Graham. Mr. Reiter's attitude, and tone of voice when he spoke to the Judge, were totally uncalled for.

Mr. Bostic's conduct was also disgusting - I was outraged every time he faced the camera, or the people in the courtroom, and smirked when Judge Graham spoke. Mr. Reiter and Mr. Bostic showed more disrespect toward Judge Graham than he (Judge Graham) could every be charged with.

It is our opinion - and the opinion of many, many citizens of Citrus County - that Judge

Graham did not receive a fair hearing!

We also feel that Judge Graham has been through enough and should not have to worry about an added charge for using the resources of his offce to defend himself.

Enough is enough - Please leave our Judge alone!

Sincerely,

/s/Mrs. Karen A. Loger
5590 S. Calgary Terr.
Inverness, FL 34452

Dennis Keene
416 W. Buttonbush Drive
Beverly Hills, Florida 32665
(904) 746-1785

March 27, 1993

Governor Lawton Chiles
The Capitol
Tallahassee, FL 32301-0001

Dear Governor Chiles:

The letter is in reference to the investigation of Judge Gary Graham by the Judicial Qualification Commission. I fully appreciate that you have matters of greater import on your desk at this time. However this is something that should be capable of resolution by you without a great deal of effort.

My wife and I have supported Judge Graham and followed the workings of his court on our local Public Service television channel since its inception. Being a quasi-judicial member of the Citrus County Code Enforcement Board, I feel that I should be considered as a somewhat informed layman. At no time have I seen Judge Graham behave in a manner other than to preserve dignity and decorum in his court. He had admittedly been innovative in some of his rulings but never, in my opinion, unfair.

The JQC hearings which were televised in full only confirmed to the viewers some of the intense dislike and bias against

the Judge by some members of the legal profession. None of the alleged charges justified the enormous waste of tax dollars to pursue this matter, or the harassment of an honest and good public official.

I earnestly request that you intervene in this inquiry in the interest of fair play. You would make a lot of voters who watched this fiasco on television feel that there really is balance and justice in our legal system.

Sincerely yours,

/s/ Dennis Keene

A 894

George J. Cook
7 Utah Street
Beverly Hills, FL 34465

REFERENCE:

Proposed removal of Judge Gary Graham from the Citrus County Court System.

The recent (trial ???) conducted by the JQC on TV left me completely "flabergasted". I can't think of a more suitable term.

As a retiree I was privileged to watch every bit of that Circus. It was amazing that the Chairman of the JQC had the audacity of preventing the poor victim of defending himself with his rambling "Motion Denied" utterances that were monotonous. I have never seen nor heard of such conduct.

I have always brushed-off the phrase "Kangaroo Court" but now I can go to my grave knowing that I have seen one.

The so-called "Jury" has made a mockery of the Judicial system with it's members reading newspaper, talking to each other and somtimes sneering and laughing while the trial was in progress.

I am not proud of being a resident of Citrus County.

I say, and urge you to keep Judge Graham on the bench.

Sincerely,

/s/ George J. Cook

A 896

Doris and Douglas Holdread
1856 W. Gardenia Drive
Citrus Springs, FL, 34434

Hon. Judge Gary Graham
110 Apopka Ave.
Courthouse Square
Inverness, FL 32650

April 24, 1993

Dear Judge Graham,

Our hearts are heavy. We feel a real miscarriage of justice has been committed in Citrus County, Fla. One could weep for the loss of fairness and disregard for the people in our fair county.

We have been supporters of yours since our arrival in 1985. We have been privileged to hear you speak on several occasions and have both been called for jury selection twice. You have come across a true gentleman who has scruples and a sense of fairness.

We have fought the fight to the best of our abilities. We've written to Gov. Chiles, the JQC, the Citrus Chronicle 'Letters' also call ins and defended you, proudly, whenever the need arose.

Please know, Judge, we are praying that you will take your fight to the Supreme Court, will remain a practicing Atty. and will run for Judge again. We need you to

continue the fight against the improprieties imposed by the political powers that be.

Feel heartened in that your supporters feel stronger than ever that your place is as the Honorable Judge Gary Graham of Citrus County, Fla.

Warmest regards,

/s/Doris and Doug Holdread

DOCUMENT 35

Public Response to Formal Charges Against Judge Graham

Excerpts from Exhibit to Show Cause Response #108B

The following are seven (7) representative examples of hundreds of letters received by the JQC and the Florida Supreme Court after the JQC charges were filed against Judge Graham.

A 899

August 9, 1992

John H. Myers
19479 VFW Road
Brooksville, Fl. 34601
Phone #(904)-799-3734

Judge Gary Graham
P.O. Box 519
Inverness, Fl. 34451

Dear Judge Graham,

My wife and I wupport you 100% in your endeavor to insure Equal Justice for everyone, regardless of Race, Creed, Color or Bank Account. However, in small counties such as Citrus and also Hernando, this is contrary to the wishes and desires of certain Power Brokers. Nevertheless, I know, and I am persuaded that God will be with you and that you will come out victorious!!!

Also I am enclosing an article which appeared in the Hernando Today Newspaper concerning the nomination of Robert Battista to the Judicial Nominating Committee.

Sincerely yours,

/s/ John H. Myers

A 900

August 11, 1992

JQC
Room 102, Historic Capitol
Tallahassee, FL 32399-6000

Dear Members:

I have been a resident of Citrus County for 32 years and know many of the former (and present) politicians, Judges and Attorneys.

I do not know Judge Gary Graham personally but have attended his court proceedings and watch the Citrus County Court Hour on TV. I believe this Judge is what Citrus County needs in its judicial system. I admire his patience, understanding, sense of humor and fairness and believe he has done and is doing an outstanding service for this area.

I sincerely hope your Committee will carefully evaluate all the alleged charges against this man who is so sincere in his efforts to make Citrus County a safer and more pleasant place to reside.
Thank you.

Sincerely,

/s/Marian F. Schoen

cc: Judge Graham

A 901

August 6, 1992

HONORABLE JUDGE GARY GRAHM:

DEAR JUDGE GRAHAM, AS A RETIRED MILITARY (38 yrs) RESIDING IN SUGARMILL WOODS I COMMEND YOU ON THE STAND YOU ARE TAKING AGAINST THE SPECIAL INTEREST INDIVIDUALS, ESPECIALLY THE SHERIFF.

YOU ARE CORRECT IN STATING THAT THE JQC GROUP IS UPSET DUE TO THE FACT THAT YOU HAVE STOOD UP AGAINST ONE OF THEIR OWN NAMELY FORMER JUDGE, A DISGRACE, LEONARD DUMRON.

AS A LAW AND ORDER INDIVIDUAL I AM CERTAIN THE CITIZENS OF THIS COMMUNITY AND THE COUNTY ARE 100% BEHIND YOU.

AS FAR AS THIS INDIVIDUAL IS CONCERNED THE LOCAL NEWSPAPERS DID NOT DO A JOB THAT SHOULD HAVE BEEN DONE WITH DAMRON, WITH THE CONSTANT PETTY COMMENTS ABOUT YOUR STYLE ON THE BENCH I HAVE CANCELLED THEIR SUBSCRIPTIONS.

JUDGE AS A FORMER NEW YORKER, FAMILIAR WITH THE JUDUCIAL SYSTEM AND DRESS IN N.Y I COMMEND YOU ON YOUR DRESS CODE AND LANGUAGE IN THE COURT ROOM.

KEEP UP THE GREAT WORK YOU HAVE DONE AND ARE DOING, AS A CZECHOSLOVAK RESIDING IN THIS GREAT COUNTRY WHICH I HAVE FOUGHT FOR MANY TIMES OVER, I REPEAT OUR MOTTO "TRUTH WILL PREVAIL" WOULD LIKE TO SEE YOU IN ACTION IN OUR COURT ROOM.

RESPECTFULLY YOURS,

/S/SAM B. CERNEK

CSH Samuel B. Cernek
7 Cypress Blvd. E.
Homosassa, FL 34446

GLOYD M. RESOR
203 South Davis Street
Beverly Hills, Florida 34465-4141

August 13, 1992

Judicial Qualification Commission
The Historic Capital, Room 102
Tallahassee, Florida 32399

Gentlemen;

As an interested ten year resident and taxpayer in Citrus County I voice my opinion concerning the current scheduled Judge Graham hearings.

Without full knowledge of all the intimate charges listed I feel that he is being crucified by some in the legal profession, some county officials and the media; the only purpose being to have him removed from the bench.

While minor deficiencies might be proven, on an overall basis Citrus County is a better place because of his forthright stand on many issues. He conducts his court in an entirely professional manner and is to be commended for demanding respect for the court. Under no circumstances should he be removed from the bench. I sincerely hope that your findings support this conclusion.

Sincerely yours,

/s/ Gloyd M. Resor

A 903

12 CATALPA CT
SUGARMILL WOODS
HOMOSASSA, FL 34446
AUGUST 11, 1992

JQC ROOM 102
HISTORICAL CAPITAL
TALLAHASSEE, FL 32339

RE: JUDGE GRAHAM

BOTH MY WIFE AND I WOULD LIKE TO EXPRESS OUR FEELINGS ABOUT THE UP-COMING INVESTIGATION OF JUDGE GRAHAM.
WE ARE NOT NEW COMERS TO CITRUS COUNTY, HAVING LIVED HERE OVER TEN YEARS. WE'VE SEEN A LOT OF CHANGES OVER THOSE YEARS WITH ONE IN PARTICULAR -- CITRUS COUNTY COURT. THAT PARTICULAR CHANGE CAME ABOUT WHEN THE PEOPLE OF CITRUS COUNTY ELECTED GARY GRAHAM. BRINGING IN A TOUGH JUDGE WHO WAS HONES AND DECENTONE WHO WAS NOT AFRAID TO SPEAK OUT WHEN HE SAW AN INJUSTICE-AN INDIVIDUAL WHO BROUGHT RESPECT TO CITRUS COUNTY COURT'S AND MADE THOSE WHO BROKE THE LAW REGRET THEIR TRESPASSES AND NOT WANT TO APPEAR AGAIN BEFORE JUDGE GRAHAM.
YES THEY COMPLAINED BITTERLY BUT THEY WERE WELL AWARE OF WHAT THEY HAD DONE AND CERTAINLY DID NOT WANT TO APPEAR AGAIN.
HE ALSO BROUGHT A BETTER UNDERSTANDING OF WHATS EXPECTED OF BOTH PROSECUTING AND DEFENSE LAWYERS IN THE COUNTY COURT, SOMETHING THATS BEEN NEEDED FOR A LONG TIME.

JUDGE GRAHAM HAS BEEN A GREAT ASSET TO THIS COUNTY AND I HOPE IN YOUR JUDICIAL WISDOM YOU MAY ALSO SEE THE GREAT JOB HE IS DOING.

HE HAS OUR GREATEST SUPPORT AND WE ALSO HOPE HE WILL HAVE YOUR SUPPORT TO MAKE CITRUS

COUNTY ONE OF THE BEST COUNTIES IN FLORIDA LED BY A GREAT JUDGE.

OUR VIEWS MAY DIFFER FROM THAT OF THE MEDIA OR THE POLITICAL CROWD THAT FEEL THE PEOPLE OF CITRUS DON'T KNOW WHAT THEY WANT, BUT A MAJORITY ELECTED JUDGE GRAHAM AND THAT CERTAINLY MUST STAND FOR SOMETHING.
PLEASE --DON'T FAIL THE PEOPLE OF CITRUS COUNTY.
KEEP JUDGE GRAHAM AS OUR JUDGE.

RESPECTFULLY

/s/JOSEPH J. REISS /s/WINIFRED V. REISS

A 905

August 20, 1992

Florida State Supreme Court
Supreme Court Building
Tallahassee, Florida 32399

Gentlemen:

We wish to express our favor for Honorable Gary Graham, our Citrus County Judge.

Judge Graham's tenure is the best thing that ever happened to the Judicial System in Citrus County.

His stern no-nonsense treatment of law-breakers that appear before his Court is just what our County has needed for many years. Judge Graham is wellschooled in the law, and he treats fairly all who appear before him.

The good citizens of Citrus County approve of Judge Graham's actions. We want to keep him in office for as long as he is willing to stay.

Sincerely yours,

/s/ John F. Atkinson and Emmaruth Atkinson
211 South Barbour Street
Beverly Hills, FL 34465-4054

cc: Honorable Judge Gary Graham

A 906

August 9, 1992

Judicial Qualifications Committee
Room 102
Historical Capitol Building
Tallahassee, Florida

re:
Judge Gary GRAHAM

The undersigned hereby submits this letter in support of Judge Gary Graham of Citrus County who has been the target of an unfounded investigation. Judge Graham is honest, professional, and runs his court with integrity and decorum. Our family of 4 voters supports him as we have in the past and will support him again in 1994.

Citrus County has many so called good old boys in its political network which is eroding very fast. This shadow government as I call it will die out in years to come, and citizens again will regain control of their government. Judge Graham does NOT bend to the will or whim of the power brokers of this county. We respect him for that.

Sincerely,

Casimer J. Smerecki
for:
Betty Ann Smerecki
Randall Smerecki
Raymond Smerecki

5477 S. Burr Terrace
Inverness, Florida
34452

DOCUMENT 36

Public Response to Adverse Publicity Prior to Charges Against Judge Graham

Excerpts from Exhibit to Show Cause Response #108A

The following are seven representative examples of hundreds of letters received by Judge Gary Graham prior to the JQC Complaint filed against him.

A 908

Pat Grubbs
813 Wakulla Dr.
Winter Haven, Fla.
33884

Dear Judge Graham,

I have read of your decisions on various cases recently with great interest. The Tampa Tribune has reported some of what they called unorthodox rulings.

I just want you to know that some of John Q. Public are saying "finally, Thank God". It is about time that someone with your attitude, "You can't separate morality from the law" made an impact on the justice system of this State.

I hope you will never be deterred by your critics. I only hope some of the youth of this state are hearing about you and your decisions.

You are giving me hope for the Justice system of this state when I was beginning to despair.

I am a native Floridian from five generations of Fla. pioneers and I love this state and care greatly about it's future and our children's future.

As one grateful citizen of Fla. I want to thank you and say, Keep up the good work.

Yours truly,

/s/Patricia A.
Grubbs

A 909

3330 E. Dale Ct.
Hernando, FL 32642
3-10-89

Citrus County Courthouse
110 North Apopka Avenue
Inverness, FL 32650

Dear Judge Graham,

I had a great time at your courtroom. I think it would be real fun to be a Judge. But I want a job wher I can have weekends off. I have heard people say that you are mean. But I think you're real nice.

Your Friend,

/s/ Colleen O'Connor

Miss Harding's 5th grade. Hernando Elem.

A 910

Central Catholic School
of Citrus County

May 28, 1992

Judge Gary Graham
Old Courthouse
1 Courthouse Square
Inverness, Fl 32650

Dear Judge Graham,

We really appreciated being able to come see you in a court session. We were amazed at some of the cases. You handled all of them very well. We were glad you gave some of the people a compassionate hearing. You are really dedicated to your job. Your talk with us really encouraged us to learn more about the laws of the county. Your talk also uplifted our spirits, made us enjoy being there, and gave us some insights in what being a judge is all about. We have watched the video many times.

Thank you very much.

Sincerely,

/s/Faith Powers
7th & 8th Grades

4340 West Homosassa Trail - Lecanto, Florida
32661

1340 N. Paulette Terr.
Inverness, FL 32650
July 14, 1990

Judge Gary Graham
Citrus County Courthouse
1 Courthouse Square
Inverness, Fl. 32650

Dear Judge Graham:

I know you have received a great deal of negative publicity and criticism concerning your views toward proper conduct in the courtroom and unusual sentences. I want you to know that I support your effort, 100%. It is refreshing to find public officials who still believe in respect and demand respect. It is a basic component in any form of communication. I run my high school classes the same way you run your court.

Keep up the good work!

Sincerely,
/s/Miss Martha Clutter

A 912

Kerry Anne Wieland
c/o The University of Tampa
P.O. Box 878
Tampa, FL 33606

5.7.1990

Judge Graham
Citrus County Courthouse
1 Courthouse Square
Inverness, FL 32650

Judge Graham:

My apologies for your short title, the courthouse operator hung up before I was able to get your full name. I am writing to you in response to seeing you on the Eye of Tampa Bay show a week or so back. I would like to take this opportunity to applaud your creative sentencing, and the courage with which you carry it out. It is nice to see discretion used where there is room for it; not only does it keep our lives from becoming dull, it puts perspective on things - a perspective that I think our criminal justice system may have lost. I would also like to thank you for having the courage to wear the "black hat" when necessary; not too many who face the political pressure that you do are willing to do that. But most of all, I would like to express my sincere gratitude for keeping with your obligation as a public servant, by doing something about what you overheard at the restaurant/bar. If you don't keep that CocaCola driver off our roads, no one will. Thank you.

As I approach my last year at the

University of Tampa, I expect to be doing an internship with someone next Spring, after which I hope to attend law school. I hope the person I do an internship with is someone of your stature.

Sincerely,

/s/Kerry Anne Wieland

Dear Judge Graham,

On Wednesday the 31st of December my husband and I attended traffic court as vistors, we had read so much about you and wanted to see you in action ourselves.

We were very impressed. You were very fair, you are just what this county needed, we moved here from St. Pete and were very proud to have you as a judge.

I am glad you said what you did to the press, they need to be taught a few things as they are so unfair.

Keep up the good work.

Sincerely,

/s/Judy Imzarry

A 915

UNIVERSITY OF FLORIDA
Office of Administrative Affairs
Gainesville, 32611-2078

Police Department
Building 51 Museum Rd

June 29, 1992

Citrus County Judge Gary Graham
1 Courthouse Square
Inverness, FL 34450-4802

Dear Judge Graham:

On behalf of women everywhere, I would like to thank you for the stand you took against sexual harrassment in your courtroom recently. An article appeared in the Gainesville Sun last week telling of a defense attorney referring to an assistant state attorney as "little lady."

It's hard to believe this is 1992 and women are still subjected to such deplorable behavior from men in the work force. As a working mother of two young dauthters, I can only hope attitudes change when it's time for them to make career decisions.

I'm not usually one to write such a letter, but it was very satisfying to see a reputable man such as yourself take a strong stand against such neanderthal behavior. If I lived in your district you

would get my vote!

Best regards,

/s/Angie Tipton
Sr. Information Spec.

DOCUMENT 37

Motion in Limine dated February 18, 1993

- Page 1 -

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING:
A JUDGE
No. 91-415
_____/

CASE NO. 80,273

MOTION IN LIMINE

Special Counsel, in anticipation of the hearing scheduled for February 23, 1993, and in compliance with the Order re: Trial and Pre-trial Preparation, dated February 5, 1993, hereby files this Motion in Limine seeking to exclude from evidence certain witnesses and exhibits proposed by the respondent and in support thereof states as follows:

On August 7, 1992, the Commission filed a Notice of Formal Charges against the

respondent, the Honorable Gary Graham, County Court Judge for Citrus County, Florida.

The Notice charged respondent with six violations of the Code of Judicial Conduct and contained thirty-one separate factual allegations supporting the charges. On October 24, 1992, an Amendment to the Notice of Formal Charges was filed against respondent by the Commission. The Amendment contained fourteen separate factual allegations in support of several of the violations contained in the original Notice.

In response to the Notice and its Amendment respondent filed a Motion to Dismiss, Amended Motion to Dismiss and Second Amended Motion to Dismiss. Respondent also filed various memorandum and approximately one hundred and fifty exhibits in support of his

motions. Respondent sought to dismiss the charges on a variety of grounds. Included among those grounds were claims that the Commission was an unconstitutional institution, that the Commission had violated his rights to due process, and that the Florida Code of Judicial Conduct was unconstitutional. The Commission denied the respondent's Motions to Dismiss.

Following the denial of his Motions to Dismiss, respondent filed an Answer and certain affirmative defenses. The Answer generally denied all of the allegations of the Notice and its Amendment. Respondent set forth eleven separate affirmative defenses. Each of these affirmative defenses were denied by Special Counsel in his response. Included among the affirmative defenses are:

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions and therefore lacks jurisdiction to proceed against the respondent judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the state and federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

EIGHTH AFFIRMATIVE DEFENSE

The charges against the respondent judge do not logically fall within the category of habitual judicial

intemperance or unbecoming judicial conduct as contemplated in §17, Article V, Florida State Constitution (sic). The conduct did not descend into rancorous personality or verbal impropriety and represents a mare's nest of trivial charges designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the respondent judge with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper

editorials and threats of legal action against it.

A Hearing was scheduled to commence on January 26, 1993. The Notice of Formal Charges and its Amendment were consolidated for the Hearing. The Commission granted Special Counsel's Motion in Limine and restricted respondent's opinion witnesses to no more than two and character witnesses to no more than three. The Commission also ordered that Special Counsel and respondent provide a complete list of all witnesses and a short statement regarding

their testimony and a complete list of all documents with sufficient description to identify each document. The respondent first responded to the Order by stating that he was "completely unable to comply with the trial order by the deadline."

Respondent issued a second response stating he would call as witnesses any citizen of the State of Florida with knowledge of Citrus County Court proceedings, any and all law enforcement officers of the State of Florida, any parking enforcement specialists, any elected public official, any and all judges of the State of Florida, any other witnesses not thought of which occur to the respondent judge prior to or during the trial and expert witnesses on the Florida Code of Judicial Conduct, journalism, due process of law, and any other area of expertise that can be thought of prior to or during the trial. Respondent stated that he would introduce any document related to the charges or defenses in the case including those related to the Motion to Dismiss.

The Hearing commenced on January 26, 1993 and continued through the evening of

January 29, 1993. During the Hearing, at the request of Special Counsel, the Commission struck seventeen of the factual allegations from the consolidated notice. In response to respondent's Motion for Directed Verdict, the Commission struck two factual allegations from the consolidated notice. As a result, the consolidated notice now contains twenty-six separate factual allegations in support of the six violations of the Code of Judicial Conduct.

At the close of the Hearing on January 29, 1993, the

Commission ordered that the respondent comply with the previously entered Order and provide a witness list and exhibit list prior to the Hearing. Respondent recently provided Special Counsel with both lists. The witness list contains approximately four hundred

and seventy witnesses including:

(1) approximately two hundred and fifty witnesses to testify regarding their observations of the administration of justice in the Citrus County Court;

(2) Approximately one hundred judges to testify regarding the Code of Judicial Conduct;

(3) Approximately forty witnesses to testify regarding politics and favoritism in Citrus County;

(4) Approximately eighteen to testify concerning "attorney misconduct";

(5) Approximately fifteen witnesses to testify regarding "selected prosecution", including Vice Chairman Kaney who was to testify regarding "his judicial misconduct.";

(6) Approximately ten witnesses to testify regarding alleged misconduct

of the members of this Commission;

(7) Former Citrus County Court Judge Leonard Damron to testify regarding jail release policies; and

(8) Haley Rolette to testify concerning "what he thinks about the JQC and Brad King.

Respondent's Exhibit List consists of approximately seven hundred exhibits, including:

(1) approximately one hundred newspaper editorials;

(2) approximately four years of general office correspondence;

(3) approximately two hundred and fifty video tapes of respondent's court;

(4) respondent's Complaints regarding Circuit Court Judge John Thurman;

(5) two composite exhibits of

approximately four hundred letters of support;

(6) approximately one hundred hearing transcripts;

(7) surveillance type photographs of a sheriff's deputy;

(8) various journal articles relating to attorney conduct;

(9) the opinion of the Supreme Court in the case of former Citrus County Court Judge Leonard Damron;

(10) various newspaper articles to former Citrus County Court Judge Leonard Damron;

(11) letters to the editor of local newspapers; and,

(12) photographs of the Marion County Courthouse.

It is not possible or necessary to respond with specific objections to each

witness and exhibit given the time allotted or to make the objections to the number of documents and witnesses. However, it is apparent from even a cursory reading of the witness list and exhibit list that very few of the proposed witnesses or exhibits relate to the six charges pending against the respondent and the twenty-six factual allegations supporting those charges. It is also apparent that the majority of the proposed witnesses and exhibits relate to four of the eleven affirmative defenses raised

by the respondent. Those four affirmative defenses are that the Code of Judicial Conduct is unconstitutional, that the Commission itself is unconstitutional, that respondent is the subject of an impermissible selective prosecution in light of the alleged

misconduct of other judges and that the charges against him are a result of a conspiracy by his political enemies.

For the reasons discussed herein, the Commission should exclude any proposed witnesses or exhibits relating to respondent's affirmative defenses, especially the four set forth above. First, and most importantly, this Commission does not have the jurisdiction to hear these affirmative defenses. The Commission is not a court of general jurisdiction. Art. V, §12, Fla. Const., created the Commission and vested it with the jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct demonstrates a present unfitness to hold office and to investigate and recommend the reprimand of any justice or judge whose conduct warrants such

reprimand. The Commission is an arm of the Florida Supreme Court dealing with the vital function of judicial discipline and is under the exclusive jurisdiction of the court. In re: Kelly, 238 So2d 565 (Fla. 1970). The jurisdiction of this Commission is limited to determining if the charged conduct occurred, if the conduct was a violation of the Code of Judicial Conduct and an appropriate recommendation to the Florida Supreme Court. Nothing in the Constitution, the Florida Statutes, the cases of the Florida Supreme Court or the rules of the Commission

vest the Commission with the jurisdiction to consider respondent's affirmative defenses.

Even if the Commission possessed the jurisdiction to consider the affirmative

defenses, they are not relevant to the conduct charged in the consolidated notice. §90.402 of the Florida Evidence Code provides that all relevant evidence is admissible. The evidence is admissible. The evidence code excludes, by implication, evidence that is not relevant. Ehrhardt, Florida Evidence §402.1 n.1 (1992 Edition). In order for evidence to be relevant, it must have a logical tendency to prove or disprove a fact which is of consequence to the outcome of the action. Gibbs vs. State, 394 So2d 231,232 (Fla. 1st DCA 1981), affirmed, 406 So2d 1113. The definition of relevant evidence includes traditional principles of relevance and materiality. Ehrhardt, Florida Evidence §401.1 n.1 (1992 Edition). Whether or not the respondent has "political enemies" who have come together in opposition

does not have a logical tendency to prove or disprove the facts set forth in the consolidated notice. Further, whether or not other judges may or may not have violated the Code of Judicial Conduct is also not relevant to this proceeding and is also beyond the jurisdiction of the Commission. The only issues before the Commission are whether or not the respondent committed the acts alleged in the Notice and if those acts constitute a violation of the Florida Code of Judicial Conduct. Any affirmative defenses must relate to those charges. Respondent's proposed witnesses and exhibits are merely his latest attempt to thwart this Commission, delay this proceeding and focus on the alleged

misconduct of others.

Most of respondent's affirmative

defenses were raised in his motions to dismiss which were denied by the Commission. The affirmative defenses are legal defenses and do not require any additional proof beyond the record of this proceeding even if they were determined relevant to this proceeding.

Wherefore, for the reasons set forth above, Special Counsel seeks an order generally excluding from the evidence in this proceeding the witnesses and exhibits proposed by the respondent which relate to issues which are beyond the jurisdiction of this court, are not relevant or material to the issues of this proceeding or are legal in nature and do not require any proof beyond what is already in the record. Additionally, and more specifically, Special Counsel seeks an order excluding from evidence the witnesses and exhibits proposed

by the respondent which relate to his affirmative defenses.

Respectfully submitted.

/s/Terrance A. Bostic
Special Counsel
Florida Bar No. 304336
P.O. Box 3401
Tampa, FL 33601-3401
(813) 254-7771

I hereby certify that a copy of this Motion in Limine was provided by telefax to the Honorable Gary Graham on February 17, 1993 and hand delivered on February 18, 1993.

/s/Terrance A. Bostic
Date: 2/17/93

A 934.5

DOCUMENT 38

News Article, Citrus County Chronicle
September 15, 1988
(Judge says some attorneys act goofy)

FRONT PAGE HEADLINE:
JUDGE TAKES AIM ON CRITICAL ATTORNEYS

BOXED QUOTE:
"IT'S ALL BASED ON DISGRUNTLED ATTORNEYS WHO WANT THE JUDGE TO WHOLESALE ACCEPT NEGOTIATIONS."

GARY GRAHAM

ARTICLE (Front Page Only)

County Judge Gary Graham on Wednesday said a number of area attorneys who don't like him have criticized him for not accepting their negotiated pleas, which could prompt him to stop considering some pleas.

"It's all based on disgruntled attorneys who want the judge to wholesale accept negotiations," he said.

"Many of the defense attorneys in this area don't like me," he said. "One reason is because i won't have ex parte discussions, where it's held outside of the courtroom, and the other party in a case is not present."

Graham said he also will not allow attorneys to call him on the phone or write to him about their cases.

Graham said to do so is wrong and could be grounds for a judge's removal from office.

He said some area attorneys want to do such things because, "The other party isn't there to defend themselves and it's convenient. It's easier than having a hearing."

He also claimed of some members of the Bar, "Many of them have always opposed me because I've always put justice above convention. They can't accept the fact that their jobs are more difficult now because I follow the rules."

"They want to go back to the days where they had a friend in court," he said, "who will do what they want."

Graham said he forces attorneys to discuss plea negotiations with him in open court only.

He added, "They also dislike me because I make them act right in court."

He also said he believes it shows disrespect to the court if attorneys are not on time, bicker amongst themselves, act "goofy", and don't "talk like attorneys" or "dress like attorneys."

"And I'm going to start taking actions against attorneys who do not act right," Graham said.

He said he will caution them the first time they do it; then on second offense take away their privilege to have him call their cases out of the docket's order for their convenience; then on third occurrence hold them in contempt of court, fining them; on the fourth time hand them community control; and the fifth time put them in jail.

"Maybe when they're over there they can read some law books and learn how to act in court," he said.

"There are many fine attorneys in the

Citrus County Bar Association who do a fine job, act right, and get good results for their clients. You don't see their names in the papers and you don't see their clients in jail."

"The judge has a prerogative to control the court decorum and to control the attorneys n the courtroom," said Inverness attorney Richard "Spike" Fitzgerald, who recently sought Graham's disqualification in a case after Graham wouldn't accept his client's negotiated plea.

He added, "In the twelve years I've practiced, I do not recall many attorneys who have been held in contempt."

"Whenever I've been in his courtroom, the attorneys have always been respectful to the court."

On Wednesday Graham said he may start refusing to accept any plea negotiations from certain attorneys.

The issue began to come to a head after a whispered, bench-side discussion in the county courtroom on Monday, Graham told Crystal River Attorney Paul Hawkes, "I've reached my limits of tolerance with attorneys in the county who don't acknowledge the court's duty to make sure that sentences are fair.

Graham told Hawkes that from Monday on he was going to refuse to

Please see **Graham**, page 5A

DOCUMENT 39

Motion for Continuance
dated December 18, 1992

BEFORE THE FLORIDA JUDICIAL

QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

SUPREME COUR
NO. 80,273

MOTION FOR CONTINUANCE

Comes now the Honorable Gary G. Graham, Citrus County Court Judge, Respondent Judge in the abovestyled cause, and makes this his Motion for a Continuance.

FACTS UPON WHICH THIS MOTION IS BASED

1. The Respondent Judge received an initial Notice of Investigation on April 28, 1992. He was "invited" to appear before the JQC on May 18, 1992, to explain eight charges of misconduct, giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to

incidents some three years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrying on all of his full-time duties as the sole Courty Court Judge for Citrus County.

2. Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Rhodes, Counsel for the Commission. Mr. Earle, a former Chairman of the JQC, had advised Respondent that such motions were routinely granted. The JQC denied the motion.

3. Respondent traveled from Inverness, Florida, to West Palm Beach on May 18, 1992, to renew his motion for a continuance. The motion was then granted but only for the reason that the Commission wanted

additional time to charge the Respondent with additional misconduct. Respondent's hearing was continued to July 31, 1992.

4. On May 17, 1992, Respondent requested that the JQC schedule approximately six hours for the hearing scheduled for July 31, 1992.

5. On June 29, 1992, Respondent received an Amended Notice of Investigation. At that point the Respondent had only 32 days to complete his preparation on the original eight charges and to begin preparation on 25 additional charges, some of which related back to incidents four years in the past and which also required the difficult transcription of electronic court reporting tapes.

6. On the same day, Respondent received a letter advising him instead of having 6 hours to explain or refute 8 charges, he would have 3 hours to explain

or refute 31 charges. Thus, if Respondent talked nonstop without interruption or questioning, he was allowed 5.6 minutes to explain or refute each of the charges.

7. Furthermore, when Respondent appeared at the purported Rule 6(b) hearing, he was quickly admonished not to

waste any time on preliminaries lest he might cut into his allotted time.

8. On August 7, 1992, the Commission filed a 31-count Notice of Formal Charges against Respondent charging him with being unfit for, among other things, questioning a State Attorney about why he was prosecuting 4th offense felony DUI cases in misdemeanor court, criticizing attorneys for acting goofy in court, and requiring drunk drivers to obtain bicycles so they could have transportation to work while on probation.

9. In response to the Notice of Formal

Charges, the Respondent timely filed a 58-page Motion to Dismiss, supported by 130 attached exhibits and a trial memorandum of law. Respondent contemporaneously filed a Motion for Extension of Time to File a Second Memorandum of Law, requesting that the Respondent be given 30 days to prepare a second memorandum and requesting that the Commission not rule on the Motion to Dismiss until the second memorandum was filed.

10. The Florida Rules of Civil Procedure (applicable to this action pursuant to FJQCR 12) do not require a litigant to seek extensions of time for the filing of additional memorandums of law. The Respondent requested the extension because given the obvious intention of the Commission to rush the Respondent through each stage of the proceeding, the

Respondent was concerned that the Commission would deny his Motion to Dismiss without notice and without hearing as to the facts upon which the Motion was based. Accordingly, Respondent at a minimum wanted the Commission to know the law.

11. The Respondent was granted the requested extension of time to file a second memorandum which was due October 10, 1992.

12. The Commission scheduled a second Rule 6(b) hearing for October 22, 1992, for the purpose of hearing a response to a Supplemental Notice of Investigation. The Supplemental Notice of Investigation was received on October 5, 1992, just 13 working days prior to the scheduled hearing. It contained 14 additional charges of misconduct, some dating back as far as five years and which involved investigation of court files and in some cases the difficult

transcription of electronic court reporting tapes.

13. In addition to the required preparation for the

While the Disposition of Motion stated that the Second Memorandum of Law was to be filed on October 3, 1992, upon further motion by Respondent the Commission notified Respondent that he would have until October 10, 1992. Since October 10, 1992, was a Saturday, the actual deadline was, therefore, October 12, 1992.

supplemental notice, the Respondent was then under an October 10 deadline for the filing of the second memorandum of law involving the complex legal issues raised by the Notice of Formal Charges.

14. The Respondent filed a Motion to Continue the October 22, 1992, Rule 6(b)

hearing.

15. The Motion to Continue was denied.

16. The Respondent timely filed a 58-page Amended Motion to Dismiss supported by 151 exhibits and a 56-page Second Memorandum of Law in Support of Amended Motion to Dismiss.

17. Special Counsel for the Commission filed a Response to the Amended Motion to Dismiss on October 16, 1992. The Response was not received by the Respondent until October 20, 1992. The Response alleged that the Respondent's Amended Motion to Dismiss was ". . . mean spirited, insulting, defaming, insufficient, and <u>false</u>." (Emphasis added.)

18. As feared, on October 21, 1992, the Motion Committee of the Commission denied the Respondent's Amended Motion to Dismiss without notice, without hearing, without an opportunity for the Respondent to prove

his speaking motion by the introduction of testimony and evidence, and without an opportunity to respond in writing or otherwise to Special Counsel's Response.

19. On that same day, General Counsel for the Commission unilaterally noticed the case for final hearing on January 26, 1993, prior to the close of pleadings in this case.

20. Respondent appeared before the Commission on October 22, 1992, in West Palm Beach. The Commission allowed three hours for the Respondent to explain, refute, or admit the alleged misconduct. The Respondent was unable to present his case due to the time limitation imposed upon him. The Commission refused to grant additional time for the Respondent to present his case, cut him off, and ended the hearing.

21. On October 22, 1992, the Commission

also approved the Motion Committee's denial of the Amended Motion to Dismiss. The order on the Amended Motion to Dismiss was filed on October 26, 1992. It stated that the Respondent's answer shall be filed within 10 days of the certificate of service of the order.

22. On October 26, 1992, the Commission also filed an Amendment to Notice of Formal Charges alleging the additional 14 counts of misconduct including the fact that the Respondent had obtained court records and motor vehicle records to prepare for his defense.

23. The Commission's order denying Respondent's Amended Motion to Dismiss and Amendment to Notice of Formal Charges

was not received by the Respondent until October 28, 1992.

24. Respondent tried on October 29,

1992, to contact Special Counsel for the Commission but he could not be reached.

25. On October 30, 1992, Respondent succeeded in contacting Mr. Terrance Bostic, Special Counsel for the Commission, and discussed with him the conflict in the Commission's filing of an Amendment to Formal Charges on October 26, 1992, and requiring an answer within 10 days of that date, an unreasonable time limitation considering the complex issues involved. Respondent requested that Mr. Bostic stipulate that the Respondent should be allowed to file an answer or a second amended motion to dismiss directed to the Formal Charges as amended and as a whole within the time limitations prescribed by Fla.R.Civ.P. 1.140(a).

26. On Saturday, October 31, 1992, Mr. Bostic contacted Respondent and advised him that he would not stipulate to the

Respondent's request and would object to any request for the Commission to correct its order on the Amended Motion to Dismiss.

27. On Sunday, November 1, 1992, Respondent prepared a Petition for Constitutional Writs, Case Number 80,708.

27a. The Petition for Constitutional Writs requested.

(1) That the Florida Supreme Court direct the Commission to vacate its Notice of Hearing and not set a

final hearing until the case is at issue.

(2) That the Florida Supreme Court direct the Commission to vacate that portion of its Order dated October 26, 1992, denying Respondent's Amended Motion to Dismiss requiring Respondent to file an answer within 10 days of October 26, 1992.

(3) That the Florida Supreme Court direct the Commission to allow Respondent

to answer or file appropriate motions including a second amended motion to dismiss directed to the Notice of Formal Charges as a whole and as amended by the Amendment to Notice of Formal Charges within the times specified by Fla.R.Civ.P. 1.140 and 1.090(e), specifically within 25 days of October 26, 1992.

(4) That the Florida Supreme Court direct the Commission to provide reasonable notice of any hearing on the Respondent's anticipated second amended motion to dismiss and that Respondent be allowed to produce evidence and present testimony and legal argument before the Commission rules on said motion.

27b. The Florida Supreme Court declined relief on items (2) and (3).

27c. Item (4) became moot for the reason that prior to the Florida Supreme Court entering an order the Respondent's Second

Amended Motion to Dismiss was denied by the Commission

without notice, without a hearing, and without allowing Respondent to produce evidence or present testimony or legal argument before the Commission.

27d. Item (1) is still pending before the Florida Supreme Court.

27e. Respondent requested the Clerk of the Florida Supreme Court to request that Case Number 80,708 be expedited by letter dated November 23, 1992.[2]

27f. As of this date the Florida Supreme Court has not ruled on Respondent's requested relief and the hearing is still scheduled for January 26, 1993.

28. Failing to hear from the Florida Supreme Court, Respondent, during the first week in December, set himself to the task of subpoenaing for both deposition and for

trial the several hundred witnesses required for his defense.

29. On December 10, 1992, Respondent sent by express mail his first 23 subpoenas for deposition and trial.

30. Notices of Taking Deposition were filed and served for each subpoena along with Notices of Taking Deposition for

---

[2]Respondent has noticed that an error was made in this letter. Obviously, since the letter is dated November 23, 1992, Respondent intended to state that he would have to begin subpoenaing witnesses during the first week of December as opposed to the first week in November.

each Commissioner of the Florida Judicial Qualifications Commission.

31. By letter dated December 11, 1992, but received on December 14, 1992, General

Counsel for the Commission advised that he was refusing to execute the subpoenas.

32. By letter dated and faxed December 15, 1992, but received on December 16, 1992, Special Counsel for the Commission advised the Respondent that he was drafting a Motion for Protective Order involving 37 of the Notices of Taking Deposition.

33. On DEcember 16, 1992, at a time when the Respondent Judge sorely needed to be preparing for trial, he instead was required to spend all day researching and drafting a second Petition for Constitutional Writs requesting the Florida Supreme Court to order General Counsel to perform his ministerial duties of executing subpoenas.

34. Late in the afternoon of December 16, 1992, Mr. Bostic, Special Counsel for the Commission, informed the Respondent Judge that he had changed his mind and was not objecting to the depositions scheduled

for December 21 and 22, 1992, thus obviating the need for the Petition for Constitutional Writs which Respondent Judge had prepared.

35. The conduct of General and Special Counsel thus wasted the time and resources of the Respondent Judge in the

preparation of his defense and made problematical whether or not the 22 executed subpoenas which were received midday December 17 could be served in the one and one-half working days remaining before December 21, 1992.

36. That the Commission's intention to challenge the subpoenas was printed in the local news media making it public knowledge that subpoenas would be attempted to be served.

37. That on the afternoon of December 17, 1992, when process servers attempted to serve at her place of business a

deposition subpoena on Ms. Johnnye Friedrich, Attorney at Law, and a critical witness in the case, that she refused to come out of her office to meet with the process server or to accept the subpoena.

38. That Respondent Judge anticipates that similar attempts to avoid service of subpoena will now be encountered due to the conduct of General and Special Counsel in delaying and obstructing their issuance and publicizing their existence.

39. That in the Commission's Response to Motion to Dismiss Special Counsel alleged that the Motion to Dismiss contained false statements.

40. That Respondent Judge contacted Special Counsel and offered to correct any false statements if he would identify them.

41. That Special Counsel agreed to identify the alleged false statements.

42. That Special Counsel by letter dated November 19, 1992, reneged on his promise to provide the list.

43. That Special Counsel by the same letter refused to provide a copy of letters supporting the Respondent Judge received by the JQC subsequent to its filing of formal charges.

44. That Special Counsel refused to provide copies of formal charges against other judges which charges have not been retained in the files of the Florida Supreme Court or the Florida State Archives.

45. That the Special Counsel's unreasonable refusal to share voluntarily these discoverable materials has greatly added to the discovery needs of the Respondent Judge and to the number of depositions needed to be taken.

46. That the General Counsel has refused to execute subpoenas directed to

Special Counsel Bostic and Schumacher which were intended among other things to obtain the above-stated information.

47. By letter dated December 2, 1992, and delivered by express mail, Respondent Judge requested discovery pursuant to FJQCR 12. Special Counsel by letter dated December 7, 1992, promised delivery of this information by december 14,

1992. As of December 18, 1992, Special Counsel has failed to comply with this discovery demand.

48. The Respondent Judge has contemporaneously filed on December 18, 1992, his Answer, Counterclaim, and Demand for Jury Trial.

49. The pleadings are not yet closed in this case.

50. The Respondent Judge is not now nor will he be able to be prepared to present

a good and adequate defense by January 26, 1993.

RELIEF REQUESTED

That this cause be continued until April 27, 1993.

ARGUMENT IN SUPPORT OF RELIEF REQUESTED

Special Counsel for the Commission has apparently had months to investigate and prepare for the filing of charges. It is also apparent that he and his special assistant have spent hundreds of man hours interrogating witnesses.

However, rather than waiting until completely satisfied with which charges were appropriate, he chose to first dribble out 8 charges and then add 23 before the Respondent could even respond to the 8 and then dribble out 14 more before the Respondent could answer to the first 31.

General Counsel then set a hearing date before the pleadings were closed.

As a result, the Respondent's time has been dominated by constant requirements to research and prepare repeated and multiple motions and pleadings to two separate and parallel proceedings and travel to remote cities for Rule 6(b) hearings. Accordingly, the Respondent, besieged by the Commission and pressed to obtain documents related to 45 charges of misconduct, some of which relate back to events five years in the past and many of which required the difficult transcription of electronically recorded proceedings, was unable to begin discovery until 60 days prior to the hearing which as of yet the Florida Supreme Court has declined to continue.

The JQC, by refusing its clear ministerial duty to execute subpoenas, then delayed and obstructed the Respondent Judge for yet another three days.

The extent and complexity of the proceedings in this case has made it impossible for the Respondent Judge to be prepared by January 26, 1993.

CONCLUSION

Due process of law requires that a litigant be afforded a reasonable opportunity to prepare and defend himself. If the Respondent Judge is required to go to hearing on January 26, 1993, his due process rights as protected by both the

State and Federal Constitutution will be violated. The Respondent Judge will rely on the Commission to make a fair and just determination.

Respectfully submitted,

/s/HONORABLE GARY GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy has been furnished by United States Express Mail to Mr. Roy T. Rhodes, Attorney for Florida Judical Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000, and Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

/s/JOETTE M. UZAR
Judicial Assistant

DOCUMENT 40

Motion for Continuance
dated January 13, 1993

BEFORE THE FLORIDA JUDICIAL QUALIFICATION COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

SUPREME COURT NO 80,273

MOTION FOR CONTINUANCE

Comes now the Honorable Gary G. Graham, Citrus County Court Judge, Respondent Judge in the abovestyled cause, and makes this his Motion for Continuance.

FACTS

1. The Respondent Judge received an initial Notice of Investigation on April 28, 1992. He was "invited" to appear before the Florida Judicial Qualifications Commission on May 18, 1992, to explain eight charges of misconduct, on May 18, 1992,

to explain eight charges of misconduct, giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to incidents some **three** years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrrying on all of his full-time duties as the sole County Court Judge for Citrus County.

2. Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Ryhodes, Counsel for the Florida Judicial Qualifications Commission. Mr. Earle, a former Chairman of the Florida Judicial Qualifications

Commission, had advised Respondent that such motions were routinely granted. The

Florida Judicial Qualifications Commission denied the motion.

3. The Florida Judicial Qualifications Commission during the proceedings has expanded the number of charges to 43. A prior motion to continue the hearing date of January 26, 1993, was nonetheless denied by the Florida Judicial Qualifications Commission. As a result, the Respondent's time has been dominated by constant requirements to research and prepare repeated and multiple motions and pleadings to two separate and parallel proceedings and travel to remote cities for Rule 6(b) hearings. Accordingly, the Respondent, besieged by the Florida Judicial Qualifications Commission and pressed to obtain documents related to 43 charges of misconduct, some of which relate back to events five years in the past and many of which required the

difficult transscription of electronically recorded proceedings, was unable to being discovery until 60 days prior to the hearing.

4. On the 7th of January, 1993, Respondent appeared, pursuant to notice by the Florida Judicial Qualifications Commission, for the purpose of being deposed. Attorney Joseph F. McDermott appeared by special appearance to represent him and, in the course of proceeding, invoked the constitutional privilege of remaining silent on the grounds that answers to certain questions propounded would require

him to become a witness against himself in violation of the 5th and 14th Amendments to the Constitution.

Until the threat of criminal prosecution is eliminated, the Respondent cannot testify in his own behalf and therefore will be

unable to defend against the charges. Unless a continuance is granted until the threat of criminal prosecution is gone, the Respondent will be unconstitutionally penalized for exercising his constitutional right to remain silent under the Fifth Amendment to the Constitution of the United States and Section 9 of Article 1 of the Constitution of the State of Florida.

A similar procedure was ordered employed in Wehling v. Columbia Broadcasting System, 608 F.2d 1084 (5th Cir. 1979), where a plaintiff suing a broadcaster for libel invoked his right to remain silent at his deposition. His suit was dismissed for his refusal to submit to discovery and he appealed.

The Court of Appeals reversed and ordered the proceedings stayed until the

statute of limitations had run on the possible criminal prosecutions. This is the procedure the Respondent requested be employed here.

5. Beyond that ground, Respondent is advised that the court reporter on the depositions taken cannot possibly have them transcribed by the time presently set for the final

hearing on the 26th of January, 1993. At the very least, a continuance should be granted until the discovery is fully available.

In that regard, as late as Wednesday, January 6, 1993, Special Counsel, Mr. Bostic, produced 7 or 8 un-transcribed audio tapes of 14 proceedings along with 10 other documents to be assessed by Respondent. As late as Tuesday, January 12, 1993, Mr.

Bostic produced 2 additional un-transcribed audio tapes of yet numerous other proceedings. Apparently there is still more to come.

6. Additionally, the Respondent has depositions of numerous critical and essential witnesses scheduled for almost every working day and Saturdays between now and the proposed hearing date. Thus he will have no time available for actual trial preparation.

7. Furthermore, during the recent depositions of Joe Brannen and William F. Swigert the Respondent discovered information directly related to his defense substantiating his claim that certain favoritism existed in the court system. Respondent needs additional time to investigate and obtain evidence of these incidents.

8. On January 12, 1993, Ms. Angela Miller, a witness listed by the Florida Judicial Qualifications Commission, failed to appear for her deposition without justification and after lawful service of a subpoena on her. Respondent needs

time to file appropriate motions to compel her compliance. Because of the Respondent's fully scheduled calendar it will be impossible for him to depose this witness until after the scheduled hearing date.

Numerous other dependents have refused to answer questions during their depositions, also requiring further motion practice in order to bring them into compliance with discovery.

9. Finally, at the end of each of the general formal charges appears the following language: "This allegation

includes, but may not be limited to, the following:" (Emphasis supplied.) Until Respondent can ascertain each incident claimed to support the charges, Respondent cannot possibly be prepared for trial.

CONCLUSION

Due process of law requires the Respondent be given time to prepare to meet the charges in order to have a fair trial.

Respectfully submitted,

/s/HONORABLE GARY GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by fax and United States Express Mail to Clerk

of the Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 323991925, and a true copy has been furnished by fax and United States Express Mail to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications

Commission, Room 102, The Historic Caitol, Tallahassee, FL 32399-6000, and Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 13th day of January, 1993.

/s/JOETTE M. UZAR
Judicial Assistant

A 971.5

DOCUMENT 41

Resume of Judge Graham

RESUME

Gary G. Graham
P.O. Box 519
Inverness, Florida 32651

Personal Data

Birthdate: January 27, 1948
Resident of Central Florida since 1960

Education

L.L.M. Business and Taxation May, 1981,
McGeorge School of Law,
University of Pacific, Sacramento,
California

J.D. June, 1980, Holland Law Center,
University of Florida
Gainesville, Florida
Honors: Deans List 4 quarters
Graduated "With Honors"

M.B.A. June, 1976, University of South
Florida
Tampa, Florida

B.S.E.E. August, 1971, University of
Florida
Gainesville, Florida

Legal Experience

Private Practice of Law
Inverness, Florida

1984 to present

Legal duties include the general practice of law. Experience in misdemeanors, felonies, divorce, wills, name changes, and civil suits. Appeals to the Second and Fifth Judicial Circuit, to the Florida Supreme Court and two appeals to the United States Supreme Court.

Office of the Public Defender
Thirteenth Judicial Circuit, Tampa, Florida
1982-1983 Assistant Public Defender

Legal duties include the defense of over four hundred indigent persons in Juvenile, Misdemeanor, Civil Committment, and Felony proceedings. Work also included extensive appellate practice, including four successful appeals to the Second District Court of Appeals.

Peirsol, Burroughs, Grimm & Bennett, P.A., Orlando, Florida 1981
Associate Attorney

Legal duties included the drafting of private placement memorandums and associated documents, researching legal issues, and advising clients in the requirements of the Federal and State securities and tax laws.

Other Experience

General Telephone Company of Florida, Tampa, Florida
1973-1978 Radio and Carrier Engineer

The Boeing Company, Cape Canaveral, Florida
1972 Test Engineer

In addition to my professional experience, I have held part-time and summer employment as an electrician, truck driver, cook, tobacco picker, carpenter, laborer, baseball park attendant, janitor, dredge hand, and survey crewman.

Courts

Admitted to practice before the United States Supreme Court, the United States Tax Court, the United States District Court, Middle District of Florida, The United States Court of Appeals, Eleventh Circuit, and all Florida Courts.

Community Activity

Volunteer with the State of Florida Department of Health and Rehabilitative Services
1973-1976, 4-16 hours per week

Professional License

State of Florida Professional Engineering License #24430 Granted December, 1978

State of Florida Real Estate Salesman License #329757 Granted January, 1980

Associations

Florida Bar Association, Admitted October, 1980

Institute of Electrical and Electronic Engineers, Senior Member, Admitted March, 1982

Kiwanis International, 1984

Significant Test Results

L.S.A.T. 704

A 975.5

DOCUMENT 42

Excerpts for Transcript of
Proceedings before the JQC
May 18, 1992 (First Rule 6b Hearing)

MEETING OF THE

JUDICIAL QUALIFICATIONS COMMISSION

Monday, May 18, 1992

3:50 p.m. - 4:40 p.m.

APPEARANCES:

Judge Gary G. Graham
Judge J. Klein, Chairman
Roy T. Rhodes, Esquire, General Counsel
Brooke S. Kennerly, Executive Director
Rutledge R. Liles, Esquire
Sybil H. Barnes
Judge Miette K. Burnstein
Judge Frank N. Kaney
Stanley G. Tate
Judge Richard Frank
Nancy N. Mahon
Seth Dennis
Judge Thomas B. Freeman
Judge Marvin H. Gillman
Joseph J. Reiter, Esquire
Harry L. Coe, Jr.

Meagher & Johnson Registered Professional Reporters
(407) 820-9066

(Discussion held off the record.)

JUDGE WIGGINTON: Judge, we have reconsidered or considered the denial of the continuance. We discussed this and debated it, because there are other things in the mill that need to be explained also. You'll come to know about those.

We then thought to expedite, and to save your time and energy and efforts of two sets of situations, would be to clarify for you what those situations are, and then while you're doing your work for one, look into the other, because it would be virtually I suppose part of the same thing anyway.

This would be continued until the time certain that we have for our normal meetings in the next several months, but they will try to do so that you have time to get your material together.

So you're -- so excuse me. Frank,

could you read the -- there's several dates that will

involve Judge Graham.

JUDGE KANEY: July 31st at 9:00.

JUDGE WIGGINTON: July 31st at 9:00 a.m.

MR. TATE: In Tampa.

JUDGE WIGGINTON: When your 6-B hearing would be held in Tampa on the 31st.

JUDGE GRAHAM: And you want to see me then?

JUDGE WIGGINTON: Informal notice. Notice of General Counsel, we'll be giving you that. We'll be getting that in the mail.

JUDGE GRAHAM: I'll work as hard as I can to finish getting this information to you.

JUDGE WIGGINTON: Yes, and we'll get it back together for you, those that you

gave out, so that you'll have --

MR. TATE: He didn't give anything out.

JUDGE WIGGINTON: Okay. It was brought to my attention that in order to really clarify it -- and we appreciate your making the statement you'll work as hard as you can -- let me emphasize that that is the time that we will have a 6-B hearing for you, Judge. So be prepared and have

it all, and so that we, too, must be prepared and exchange these ideas.

JUDGE GRAHAM: Now, there's only one thing I don't understand. You said you had to see about other proceedings or something?

JUDGE WIGGINTON: I said there may be other matters that are looked into also, because we often find in our investigations that you go to first base and something

kind of clicks and says, well, let me look around second base, too, just to be sure.

So there may be things like that that can happen in any of these type of fact-finding situations.

JUDGE GRAHAM: Well, you understand that when it comes to first base, I can help you folks and prepare for it. When you come to second base, I don't know anything about second base, so I'll do my best.

JUDGE WIGGINTON: Okay

JUDGE GRAHAM: But I won't be able to be prepared. Is that fair enough?

JUDGE WIGGINTON: You won't be able to be prepared?

JUDGE GRAHAM: For second base.

JUDGE BURNSTEIN: We'll see you the 31st.

JUDGE GILLMAN: Judge Graham -- do

you want to clarify it, Judge?

JUDGE WIGGINTON: I want it to be clear.

JUDGE GILLMAN: There are some other matters that are under investigation by the Commission other than these eight items that were noticed for today.

JUDGE GRAHAM: Okay.

JUDGE GILLMAN: They have not been brought before the Commission yet for consideration. They may be brought before us at a time prior to this July 31st date, and if they are, there will be notice given to you in regard to them.

I'm not saying that they're -- what they are. I don't even know what they are myself. They haven't been brought to us, but there's an indication that there may be some other matters.

If there are, you will be notified in sufficient time to be prepared for that July 31st date.

And that was one of the considerations, so that you will know, that you motion was granted,

your request was granted today.

We don't want to visit Judge Graham's problems or any allegations against Judge Graham more than one time. We want to get together and get the matter behind everybody once and for all at some particular time in the near future.

JUDGE WIGGINTON: Do you understand now?

JUDGE GRAHAM: Yes, sir, I think I understand that there have been other charges between -- which we may talk about on July 31st.

JUDGE WIGGINTON: Right. Thank you so much for coming, and hopefully we have resolved the matter for you.

JUDGE GRAHAM: May I be excused?

JUDGE WIGGINTON: yes.

- - -

(Thereupon, at 4:40 p.m., the hearing was concluded)

DOCUMENT 43

Motion for Continuance
dated February 10, 1993

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91-415 HONORABLE GARY G. GRAHAM CITRUS COUNTY COURT JUDGE	SUPREME COURT NO 80,273

_____/

MOTION FOR CONTINUANCE

Comes now Honorable Gary G. Graham, County Court Judge of Citrus County, Florida, and moves for an Order from the Florida Judicial Qualifications Commission upon the following grounds:

1. The ground set out in the prior motions for continuance are adopted here.

2. That as a further ground Respondent Judge states that the transcriptions of the depositions taken in this cause are critical to his defense, that they have not been completed, and that they are

unlikely to be completed by February 23, 1993.

3. As a further ground, the Respondent Judge states that a continuance is vital and necessary for Respondent to establish his defense of selective prosecution.

4. The defense of selective prosecution arises directly from the Fifth Amendment to the Constitution of the United States and is applied to the States through the Fourteenth Amendment to the Constitution.

5. U.S. v. Aguilar, 871 F.2d 1436 (9th Cir. 1989), was a case involving charges against a "sanctuary" group for violations of the immigration laws in which the defendants

attempted to raise the defense of selective prosecution.

The trial court's rejection of the

defense was affirmed by the court of appeals which dealt with the question as follows:

> "To establish impermissible selective prosecution, a defendant must show that others similarly situated have not been prosecuted and that the prosecution is based on an impermissible motive." United States v. Lee, 786 F.2d 951 (9th Cir. 1986), Claims of selective prosecution are to be judged under ordinary equal protection standards. Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985).
>
> * * *
>
> "The goal of identifying a similarly situated classof law breakers is to isolate the factor allegedly subject to impermissible discrimination. The similarly situated group is the control group. The control group and defendant are the same n all relevant aspects, except that defendant was, for instance, exercising his first amendment rights. If all other things are equal, the prosecution of only those persons exercising their constitutional rights gives rise to an inference of discrimination. But where the comparison group has less in common with defendant, then factors other than the protected expression may very well play a part in the prosecution." (Emphasis supplied.)

6. The "control group" in this case constitutes all judges in the State of

Florida subject to prosecution by the Florida Judicial Qualifications Commission.

7. Proof that others similarly situated were not prosecuted is a matter of compiling probative data that such is the case. The few cases in this are indicate a not so surprising effort on the part of the prosecuting authority to thwart the gathering of necessary data.

8. In U.S. v. Steel, 461 F.2d 1148 (9th Cir. 1972), the defendant was indicted and convicted for refusal to answer questions on a census form. He claimed his prosecution was selective because he had participated vocally in a census resistance movement. In response to Steele's motion for particulars asking how many others in Hawaii had committed the same offense, the government responded that such information

was not available. Steele found six others who had refused to complete the census form, who had not publicly expresed resistance to the census, and who were not prosecuted.

The Court of Appeals reversed the conviction, noting that the government offered no explanation other than it was exercising prosecutorial discretion.

9. A showing of improper motive is not completely clear but in Attorney General of the U.S. v. Irish People, Inc., 684 F.2d 928 (D.C. Cir. 1982), the court ventured a definition as follows:

> "There is some confusion in the case law -- and the district court's opinion -over what constitutes 'improper motivation.' Two kinds of motives are apparently impermissible: those which have no rational basis under the statutory scheme being enforce,and those which are in and of themselves violative of the Constitution."

10. The first effort, procedurally, must be to get discovery. In U.S. v. Kerley,

787 F.2d 1147 (7th Cir. 1986), a refusal to register for the draft case, the Court of Appeals noted:

- Page 4 -

> "It is true that a motion to compel discovery in a selective prosecution case does not stand on quite the same footing as a motion to dismiss the indictment. The denfendant need not make a 'complete prima facie case' as he must when the motion is aimed at securing an evidentiary hearing on the merits of his claim for selective prosecution; rather, he need only show a 'colorable basis' for the claim."

11. The selective prosecution defense was recognized in the State of Florida in State v. Parrish, 567 So.2d 461 (Fla. 1DCA 1990), where the defense was upheld by the trial court in a criminal prosecution and affirmed by the Court of Appeal.

12. The Respondent Judge has made a prima facie case of selective prosecution during the depositions of Judge Woodrow Beachamp, Judge William Swigert, and for

Judge Harry Lee Coe. During these depositions:

a. Judge Beauchamp admitted to clear violations of the Code of Judicial Conduct in that he stated that he has performed numerous weddings at the Courthouse during working hours and accepted compensation for his services. He has not been prosecuted by the Florida Judicial Qualifications Commission.

b. Judge Swigert stated that certain conduct described to him was clearly unethical, proved a judge was unfit, and bordered on criminal conduct. Unknown to him the conduct was that which had been engaged in by Judges John Thurman and William F. Edwards. Thurman and Edwards have not been prosecuted by the Florida Judicial Qualifications Commission.

c. Former Judge Coe stated that certain conduct described to him was clearly unethical. Unknown to him the conduct which was complained of had been engaged in by Judges John Ghurman and William F. Edwards. Thurman and Edwards have not been prosecuted by the Florida Judicial Qualifications Commission.

13. In order to present this defense (previously raised by Respondent in these proceedings), 120 days of discovery will be needed in order that Respondent have his constitutionally protected right to a fair trial.

14. Respondent Judge requests notice of the hearing of this motion before the Motion Committee and requests to be present to argue the facts and merits of the motion.

Respondent Judge further requests the

Florida Judicial Qualifications Commission notify him of the Commission's agenda to review the Motion Committee's disposition of this motion. Respondent Judge reminds the Commission that after the filing of formal charges Rule 24, Florida Judicial Qualifications Rules, provides that "all further proceedings before the Commission shall be public". This Rule applieds to Rule 9(b) reviews of Motion Committee dispositions.

The Respondent Judge further requests that this review be heard at a public hearing in his presence and not by quorum but by the full Commission as it appears that the Florida Constitution in establishing the membership of the Commission contemplated all action be ruled upon by the

entire Commission in order that a respondent

judge receive the full protection of the diversity of membership.

Respectfully submited,

/s/HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450-4802

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by United States Mail to Clerk of the Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy by United States Express Mail to Mr. Ford L. Thompson, General Counsel for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000, and by United States Mail to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, P.O. Box 3401, Tampa, FL 33601-3401, this 10th day of February, 1993.

/s/JOETTE M. UZAR
Judicial Assistant

Supreme Court, U.S.
FILED
NOV 5 1993
OFFICE OF THE CLERK

93-713

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME SIX

Michael L. Kinney *
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Gary G. Graham
407 Courthouse Square
Inverness, FL 34450
(904) 637-2637

*Counsel for Petitioner

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

INDEX TO APPENDIX

Document	Description	Page
	VOLUME SIX	
44	Excerpts from Third Memorandum of Law In Support of Second Amended Motion to Dismiss	994
45	Excerpts from Answer, Counter-claim and Demand for Jury Trial	1053
46	Excerpts from Memorandum of of Law in Support of Fourth Amended Motion to Dismiss	1063
47	Excerpts from Petitioner's Show Cause Response	1070
48	Transcript of *State v. Douglas*	1087
49	Transcript of the Testimony of Kim Amann	1109
50	Pages 179-183 of Petitioner's Show Cause Response	1121
51	Excerpts from Transcript of the Proceedings	1128
52	Excerpts from Transcript of the Proceedings (*State v. Billy Dobbs Page*)	1132

DOCUMENT 44

Excerpts from
Third Memorandum of Law
in Support of
Second Amended Motion to Dismiss

Note: Excerpts of the Second Amended Motion to Dismiss which is supported by this memorandum is located at Page A 330 of the Appendix.

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A

JUDGE, NO. 91,415

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

THIRD MEMORANDUM OF LAW IN SUPPORT OF SECOND MOTION TO DISMISS

Comes now the Respondent and files this his Third Memorandum of Law in Support of Second Amended Motion to Dismiss.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z.

* * *

- PAGE 7 -

AS TO ALL GROUNDS

The Florida Judicial Qualifications Commission shall be hereinafter referred to as the "JQC" or the "Commission".

* * *

A "fair trial in a fair tribunal is a basic requirement

- PAGE 8 -

of due process." In Re Murchison, 349 US 133 (1955). This applies to administrative agencies which adjudicate as well as to courts. Gibson v. Berryhill, 411 US 564 (1973).

The United States Supreme Court has stated that, "Not only is a biased decision maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness." Murchison at 136.

The JQC is a thirteen member appointed Commission composed of:

> (1) Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;
>
> (2) Two electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and
>
> (3) Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

Florida Constitution, Article 5, Section 12.

There is no prohibition against commissioners who are one of the "five electors" being representatives of the news media. Respondent fears some members may be representatives of the news media. However, as the statement of facts points out, the JQC will not allow the Respondent to determine if this is true.

The JQC has created by the Florida Constitution acts as the prosecution, judge, and jury in the prosecution of

judges for alleged unethical conduct in the State of Florida. Florida Constitution, Article 5, Section 12; Florida Judicial Qualifications Commissions rules (hereinafter FJQCR) R6 through R12.

Its investigative hearings are secret. FJQCR, R6(b); R24.

"The Judge has no right to be present or to be heard during an investigation, . . ." FJQCR, R6(b). Furthermore, there is no provision in Florida law or procedure preventing anyone at any time from approaching members of the Commission and discussing with them complaints about a respondent judge.

The JQC rules on issues of law and evidence, hears the evidence and determines the facts, and then recommends a determination to the Florida Supreme Court which is the final arbiter of the respondent judge's fate. FJQCR, R21.

The JQC may recommend reprimand or removal of the judge upon a vote of 9 of its members. Florida Constitution, Article 5, Section 12. A reprimand has been characterized as a "humiliation"

of the judge. In re Damron, 487 So.2d 1, 7 (1986). Removal is equivalent to the impeachment of the judge, a duly elected public official in the State of Florida. (All judges in Florida hold contested elected positions or are subject to elections for merit retention. Respondent Graham has been twice elected to the County Court of Citrus County.)

- PAGE 10 -

The Florida Supreme Court as final arbiter does not hear the evidence or witness the testimony. Reprimand or removal of the respondent judge is accomplished by a simple majority vote of four of the seven-justice court. Thus by the vote of only 13 individuals an elected public official in the State of Florida through an administrative procedure can be publicly humiliated or impeached.

During the first 15 years of its existence this simplified procedure was used with great caution resulting in the filing of formal charges against only 18 judges, an average of approximately one formal charge per year.

However, during the last 11 years the political appointees on this Commission have pursued their duties with a marked increase

in zeal. Since 1983 the Commission has formally charged 55 judges, an average of more than five judges per year.[1]

---

[1] HISTORY OF JQC FORMAL CHARGES
(Information supplied by Clerk of the Florida Supreme Court as of September 124, 1992.)

FIRST FIFTEEN YEARS			LAST ELEVEN YEARS		
Year	Judge	Case No.	Year	Judge	Case No.
1967	Kelly	38,595	1982	Cooper	61,847
1968	None		1983	Gobbie	64,052
1969	None			Leon	63,554
1970	None			Merckle	63,555
1971	None			Merckle	63,556
1972	None			Speiser	64,077
1973	Rose	43,619		Stancil	63,885
1974	Boyd	46,601	1984	Byrd	66,019

(Continued on Next Page)

(Continued)

	Dekle	46,599	1985	Block	67,298
	Dekle	46,600		Defoor	67,595
	Falck	46,101		Damron	67,151
	Stikelether	45,353		Defriest	66,806
1975	None			Muszynski	66,876
1976	Gale	49,062		Tyler	67,895
	LaMotte	49,429	1986	Kay	69,672
	LaMotte	49,982		Pratt	69,671
	Lee	49,428		Berkowitz	69,673
	Lee	49,929		Baker	69,674

A 1000

1977	Malmquist	51,961
	Smith	51,908
1978	Crowell	54,200
1979	Shearer	55,947
1980	Courtney	59,776
	Lanty	59,489
	Lanty	59,866
1981	Gridley	60,182
	Turner	61,218
	Byrd	69,675
	Eastmore	69,745
1987	Clayton	70,006
	Kerr	70,961
	Sanderlin	71,196
	Sturgis	71,263
	Kirwin	71,394
1988	Kilbride	73,172
1989	Hayes	73,502
	Tye	74,120
	Carnesoltas	75,204
	Capua	75,203
1990	Gale	76,106
	Zack	76,570
	Norris	76,732
	Meyerson	76,887
	Leffler	77,060
	Turner	77,087
1991	Trettis	77,431
	Gelber	77,717
	Perry	77,647
	Fowler	77,929
	Spencer	78,098
	Glickstein	78,288
	Carr	78,288
	Davis	78,747
	Shenberg	78,748
	Sepe	78,749
	Perry	78,927
1992	Santoro	79,206
	Shenberg	79,436
	Santoro	79,817
	Marko	79,247
	Bryson	79,818
	Graham	80,273
	Garrett	80,424
	Elwell	80,440
	Perry	80,457

By comparison during the entire 147-year history of the State of Florida, only 10 Articles of Impeachment have been passed by the Florida Legislature. Florida State Law Review, Volume 6, page 2, at p 17-29.

The prefact of the Florida Code of Judicial Conduct adopted by the Supreme Court of Florida, among other things, provides:

> This Code, with minor modifications to adapt it to our Florida judicial system, is adopted by the Supreme Court of Florida to supersede the Canons of Judicial Ethics. The Code, consisting of statement norms, denominated canons, and the accompanying text setting forth specific rules, states the standards that Judges should observe, and these are mandatory unless otherwise indicated. The commentary is included for purposes of construction and understanding. Under Section 12(a), Article 5 of the Florida Constitution, the Judicial Qualifications Commission is charged with the responsibility of enforcing these standards.

It is apparent that the Code of Judicial Conduct sets out the only standards for the conduct of judges in this State. For a judge to be guilty of misconduct, his conduct must necessarily violate the Code.

The Florida Code of Judicial Conduct provides among other things that:

CANNON 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and **enforcing**, and should himself observe, **high standards of conduct** so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective. (Emphasis added.)

CANON 2

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. **He should be unswayed by partisan interests, public clamor, or fear of criticism.**

(2) A judge should maintain order and decorum in proceedings before him;

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and **should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.**

> (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications **concerning a pending or impending proceeding.** A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. (Emphasis added.)

Thus the Florida Code of Judicial Conduct requires a judge to actively control the conduct of others under his control (including attorneys) to make sure that the proceedings are orderly, and to promote public confidence in the judiciary.

He must do so without regard to public clamor or

criticisms.

AS TO GROUND ONE

FIRST DUE PROCESS ARGUMENT

Where the investigative and adjudicative functions of an administrative hearing panel are combined, it is not an unconstitutional violation of the procedural due process of the Federal Constitution unless under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and

adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden. Withrow v. Larkin, 43 L.Ed.2d 712, 717 (1975).

In that case a doctor complained that he did not think it was fundamentally fair to have his prosecutors also try him. In ruling against him the United States Supreme Court stated that in the combination of investigative and adjudicative function **without more** does not constitute a due process violation. Withrow at 58.

The Court also stated that, "Of course, we should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice." Withrow at 51. (Emphasis added.)

The State of Wisconsin Statutes involved at the time Withrow was decided are as follows:

* * *

- PAGE 18 -

There are several significant differences between the Wisconsin statutory procedure for control of doctors upheld in Withrow v. Larkin and the procedure for removal of judges as provided by its

constitution and the Florida Judicial Qualifications Commission Rules as promulgated by the Florida Supreme Court.

Item One:

The medical board in Withrow had the authority to temporarily suspend Doctor Larking for a maximum of six moths. §448.18 (7), Wis. Stat. Under the Florida scheme the Florida Supreme Court and its "arm" and "intermediate agency" not only investigate, prosecute, try, and review proceedings against a judge but also have the authority to permanently remove him from his elected term of office. Florida Constitution, Article 5, Section 12.

Item Two:

Under Wisconsin's procedure the medical board in order to obtain the revocation of a doctor's license had to complain to the district attorney who in turn had to bring a civil action in circuit court. §448.18 (2), Wis. Stat. Thus the medical board could not investigate, prosecute, try, and then revoke a doctor's license. The ultimate decision for

revocation rested not only in the purview of an independent agency but indeed a separate branch of government.

By comparison, under the Florida procedure the same branch of government and the same agency (the Florida Supreme Court and its arm and intermediate agency, the JQC) investigate, prosecute, try, and then remove judges from their elected terms of office.

Item Three:

Under Wisconsin procedure the doctor has a right to demand a jury trial on the issue of revocation, §448.18 (2), a fundamental guarantee of fairness not available to Florida judges subject to formal charges by the JQC.

Item Four:

Wisconsin's procedure provides a sanction against those who file willful and malicious accusations against doctors by the assessment of court costs against them. §448.18 (2) Wis. Stat. Florida procedure not only fails to sanction willful and malicious complaints but also cloaks them in an absolute veil of secrecy which continues through and even after the proceedings are over.

Item Five:

The individuals who are subject to the Wisconsin procedure are not elected public officials; they are doctors. The licenses

granted by the board of medical examiners can be taken away by that same board (albeit after complaint and jury trial). Surely the disfranchisement of the public from

the benefit of keeping its elected officials should require a procedure with even greater safeguards of fundamental fairness. Absurdly enough, it is easier to remove an elected judge in the State of Florida than to revoke the license of a doctor in Wisconsin.

Furthermore, the fact that judges are elected public official subjects the entire removal procedure to political motivation and pressure not present in the revocation of professional licenses. The Respondent concedes that the revocation of a doctor's license has a minute marginal benefit to other doctors inasmuch as it removes one of the thousands of doctors who practice medicine from competition.

However, when an elected public official is removed from office it makes vacant a position to be filled by his political enemies and others who want his job. Furthermore, an elected public official routinely engenders animosity from the press and

other politicians, a circumstance that is rare to the professional practices.

In the instant case Mr. Horn, the Judge's immediate past political opponent who was defeated at the polls, has publicly squabbled with another politician over who filed what complaint first and who should receive the credit for getting Judge Graham (Exhibit 115).

Horn has also publicized the filing of several JQC complaints which failed to result in formal charges (See Ex 141) and is directly involved in four of the formal charges

filed including instances where the Judge admonished him for abandoning his clients on appeal and pursuing frivolous appeals.

Another formal charge involves the client of Mr. Ken Travis who announced his plans to run against the Respondent Judge in open court during a sentencing hearing (See Ex 142).

Respondent is well aware of the argument made that it doesn't matter who makes a complaint but only if it is true. The glaring fault in this reasoning is that many of the formal charges involve disputed issues of fact.

When political opposition and ambition are the driving force behind accusations it is also a driving force behind twisted memories, distorted facts, and just plain lies.

Furthermore, the triers of fact under the Wisconsin procedure are not politicians subject to being pressured by the press. Almost half of the Commission under the Florida procedure is made up of elected public officials. All of the members of the Florida Supreme Court are elected public officials. As such they are naturally interested in maintaining a favorable press image for the safety of their own elected positions.

Brad King understood this when he sent the Commission copies of unfavorable news editorials and articles (See Ex 132). Brooke Kennerly, the commission's Executive Secretary, understood this when she answered questions for the press identical to those the Commission refused to answer for the

Respondent.

It does not matter that the Respondent is the victim of what has been described as "attack" journalism, a trend in the American press which has caused even journalist Carl Bernstein to conclude

has turned the press, the media, the politicians, and even the people into a sewer (See Ex 143).

The politicians on the Commission know that the press is on a feeding frenzy with respect to the Respondent Judge. They have no politically accepted alternative than to find him guilty. If they don't, the sharks will turn on them. They will have to get the Judge, otherwise the press will get them.

Under these highly charged political circumstances surely the State and Federal Constitutions require more than nine members of a politically appointed committee and four concurring elected members of an appellate court to insure a fundamentally fair forum for the determination of the facts of the case.

Respondent is unconcerned about what he has done. He is very concerned that a committee of zealots subjected to political pressure applied by the newspapers and responding to complaints by his political opponents will remove him from office for what he has **not** done by the simple expediency of saying, "Well, we don't believe the Judge and we do believe his opponents." That's not fair and it is not due process.

Item Six:

Under the Wisconsin procedure the Board of Medical Examiners does not include individuals whose interests are inherently inimical to the doctors under investigation. The Wisconsin Medical Examining Board is composed of eight doctors and two lay persons. It would be unusual for a doctor under investigation to have an interest adverse to any member of the board either directly or by philosophy.

By contrast under the Florida procedure for removing judges the JQC is composed of two county judges, two circuit judges, two appellate judges, two lawyers, and five lay persons who may be members of the press and all of whom are prominent political appointees. A judge is constantly placed in a position adverse to the groups represented by these individuals. The judge not only may but must under the Florida Code of Judicial Conduct reprimand and control attorneys before the court. County judges are also often inherently at odds with the circuit judges over work related issues and administrative decisions and of course are subject to reversal for error or abuse of discretion by the appellate judges.

A review of the formal charges in this case pointedly illustrates the problem.

Charge 1A involves the Judge admonishing a small number of the Citrus County Bar for improper conduct in court.

Charge 1B involves the Judge stating that attorneys and doctors had in the past received special treatment.

Charge 1D involves the Judge accurately reporting a specific case of favoritism toward the daughter of a politically prominent individual.

Charge 1E involves the Judge requiring an attorney to explain why a felony offense was being tried in misdemeanor court.

Charge 1F involves the question by the Judge if ex parte communication had been made between the State Attorney and the Chief Judge for the Fifth Judicial Circuit (later the Administrative Circuit Judge for Citrus County would admit it was he instead).

Charge 1H involves the Judge reprimanding a public defender for falsifying a record and pointing out an appellate judge had written a dissenting opinion based on the false record.

Charge 3A involves untrue allegations by an attorney that the Judge told her to sit down, shut up, and tell your clients they don't need you.

Charge 3C involves reprimanding an attorney for abandoning his clients.

Charge 3D involves reprimanding an attorney for frivolous appellate work which wasted his client's time and money.

Charge 4A involves the Judge's communication to the local attorneys stating that the Judge would not accept negotiated pleas from those who challenged his method of

discussing them.

Charge 4B involves the Judge's statement that he did not owe an attorney any favors in court.

Charge 4D involves the Respondent reviewing at first appearance a bond set by Circuit Judge Thurman, the same individual the Respondent Judge had formally complained of for exercising improper jurisdiction over county court cases and for saying chicken sit in circuit court.

Charge 5A involves the Judge's refusal to participate in a nonpublic meeting in the presence of a news reporter.

In summary the Respondent Judge who is falsely accused of unethical conduct involving his rightful control and criticism of the misconduct of attorneys, circuit judges, appellate judges, newspapers, and influential individuals is now asked to submit the determination of the **facts** of his case to attorneys, circuit judges, appellate judges, influential political appointees, and possibly even newspaper people.

To be tried by a group of individuals who refuse to be voir dired and who represent groups with inherently adverse interests is fundamentally unfair and a denial of due process.

Compounding the problem even further is the **combination** of politics and the inherent conflicts a judge faces with respect to these various groups. For example, Justice Rosemary Barkett of the Florida Supreme Court is currently

under a serious challenge for merit retention. She has been the object of a vigorous and well-organized attack for what some

citizens including six state attorneys and several police chiefs and sheriffs consider an overly liberal judicial philosophy.

To the rescue comes now the President of the Florida Bar Association who issues a public statement defending Justice Barkett (Ex 147). Respondent sincerely hopes that he does not offend Justice Barkett or distress any other members of the Florida Supreme Court when he says that it is fundamentally unfair for Justice Barkett to be asked to decided whether or not Judge Graham has acted correctly in his bitter battle with the deplorable local bar.

Furthermore, the example shown to the other justices by this close political cooperation between the organized bar and the Florida Supreme Court puts each justice of the Florida Supreme Court in a similar position. The message is clear. Be good to the organized bar; they may be your savior in your next election for merit retention.

It is unfair for a groups of seven elected public officials who may need attorneys for political support to make the ultimate determination of whether or not the Respondent has correctly admonished various miscreant attorneys in the Citrus County Court.

Item Seven:

Under the Wisconsin procedure the medical board's

investigative hearings were closed to the public. But Dr. Larking ". . . and his attorney were permitted to be present throughout and in fact his attorney did attend the hearings and knew the facts presented to the board; . . ." Withrow v. Larkin, 43 L.Ed.2d 712, 717 (1975).

Under the Florida procedure prior to formal charges being filed the JQC engages in secret ex parte meetings at which secret complaints against a judge are discussed. These discussions and the facts presented to the Commission remain secret even after formal charges are filed. Thus at trial the judge under investigation is only allowed to respond to that which is voluntarily disclosed by the Commission. Undisclosed facts which may impeach the judge's credibility remain unknown and unanswered by the respondent judge and sit like poison in the minds of the trier of fact.

While the effect of this secrecy is bad enough in the individual case, its cumulative effect is intolerable. As stated in his

motion the Respondent Judge is aware through admissions by his opponents and by informal contacts by the JQC that he has been the subject of numerous false charges over many years (See Ex 141, 140, and 115, p 46 1 21).

Imagine this scenario. Twelve complaints are filed against the judge over a six-year period. Every six months the Commission hears a new complaint and discusses it in secret. However, on each occasion the Commission determines by a vote of 11 to 13 that the charges are unfounded. Thus

every six months with two members of the Commission believe the judge has engaged in unethical conduct saved only by the foolish votes of the other members.

Conceivably by the end of six years, even giving consideration for rational replacement of commissioners, every member of the Commission might believe that the judge had wrongfully "escaped" sanctioning by the Commission.

Then when the Commission finally agrees on filing formal charges the judge is faced with a group of individuals who are highly biased and antagonistic. Furthermore, since their bias is

based on past noncharged conduct, it is unlikely that it will surface as relevant to the judge's current trial despite the fact that these secret unanswered communications have poisoned the minds of the commissioners against the judge.

This procedure is the legal equivalent of playing Russian roulette with the judge's credibility. Keeping the prior communications concerning the judge secret prior to filing formal charges might be defensible. Keeping them secret after the filing of formal charges is fundamentally unfair and unconstitutional.

Item Eight:

Under the Wisconsin procedure there was no independent indication that bias was actually at work in practice.

Under the Florida procedure and particularly with

respect to Respondent Judge there have been several obvious indications of bias against the Respondent Judge.

After the initial filing of a Notice of Investigation the Judge was given only three weeks to respond to eight charges of misconduct relating back to incidents some three years in the past and

requiring the difficult transcription of electronic court reporting tapes.

His motion for a continuance was summarily denied without notice or a hearing and despite the fact that his attorney, a former Chairman of the JQC, had indicated that motions of this nature were routinely granted.

After reviewing his motion for a continuance in person, the Commission granted his motion but only for the stated purpose of piling more charges on the Judge.

When the Judge requested a six-hour hearing to respond to eight charges, the Commission replied by allowing him three hours to respond to the original eight charges plus twenty-five additional charges, roughly five and one-half minutes per charge.

When the Respondent Judge appeared he was not allowed to bring an assistant and was quickly admonished not to waste the Commission's time and was not allowed a few minutes to prepare a seating chart.

Respondent was then told how he would present his case despite the fact that the Commission's own rules provide for the presentation of a written or oral statement or both at

the Judge's discretion.

The Commission would not introduce the professions of two of its members even though it made known the profession of the other eleven.

It refused to answer a direct question by the Judge if any member had experience in or was related to the newspaper business. Yet when subsequently asked the same question by a newspaper reporter and the President of the Citrus County Bar Association the Executive Director responded, thus proving the Commission's sensitivity to pressure from the press and the organized bar.

The Commission further refused to answer a short series of questions regarding some very fair and fundamental issues regarding their impartiality to try the case.

The Commission refused to answer a question regarding its position on whether or not the Judge could publicly respond to the premature disclosure of the investigation of one of his political opponent for violating the Commission's own rules of confidentiality.

The Commission also attempted and to some degree succeeded in putting one-side arguments into the record. It did this by allowing a commissioner to make a factual comment and an incorrect argument concerning ex parte communications and then silenced the Judge's response.

After the Respondent's first Rule 6(b) hearing the

Commission set an October 10 deadline for Respondent to file a requested Second Memorandum of Law (Ex 144).

On October 1, 1992, the Commission knowing full well that Respondent was preparing a complicated Second Memorandum of Law in support of a 59-page Motion to Dismiss filed a Supplemental Notice of Investigation alleging 14 additional charges of misconduct including a complaint about a decision upheld on appeal and the Judge's criticism of an attorney for wearing a leather disco jacket to an official court proceeding.

Respondent was allowed only 13 working days to prepare for the Rule 6(b) hearing on 14 additional charges dating as far back as five years and requiring the difficult transcription of electronic court reporting tapes.

Respondent was also allowed only three hours for this hearing. Thus if he talked nonstop for three hours he was given less than 13 minutes per charge to present his case.

Respondent's Motion for a Continuance (Ex 145) was summarily denied without notice or hearing (Ex 146).

Finally, two members of the Commission have admitted they were biased and recused themselves from the case.

The conduct of the Commission in this particular case has not evinced a desire to impartially determine the delicate issues of fact involved but rather an obvious desire to put the Respondent Judge in his place as quickly as

possible and to shut his mouth forever against his criticism of a sick small county legal system.

CONCLUSION

GROUND ONE - FIRST DUE PROCESS ARGUMENT

The United States Supreme Court has held that combining the investigative and adjudicative functions without more does not constitute a due process violation unless under a realistic appraisal conferring the investigative and adjudicative powers with one

agency poses such a risk of actual bias or prejudgment that the practice must be forbidden. Withrow v. Larkin, 421 US 35, 47, 58 (1975).

The Court also held that we should remain alert to the possibilities of bias in the way any particular procedure actually worked.

There is much more going on in the Florida procedure for removing elected judges in the State of Florida than in suspension of doctors in the State of Wisconsin.

The Florida procedure involves politicians representing inherently adverse interest and subject to political pressure from the press trying other politicians. It involves one arm of a single agency investigating in total secrecy and then prosecuting and trying the facts of the case.

It is rife with possibilities of abuse by the submission of twisted, distorted, and untrue evidence based on the political ambitions of the judges' opponents and those who

have lost their cases or gone to jail as a result of his decision.

It has no provisions for sanctioning or discouraging false claims and does not require a jury trial.

Furthermore, a reading of this record reveals an obvious working of bias in the particular procedure for removing judges in the State of Florida.

Accordingly, the Florida procedure by combining the investigative and adjudicative functions in one agency violates the State and Federal due process rights of the elected judges in the State of Florida. The Commission is therefore an unconstitutional body lacking jurisdiction over the Respondent Judge and the charges against him should be dismissed.

AS TO GROUND ONE

SECOND DUE PROCESS ARGUMENT

Under the Wisconsin procedure the constitutionality of the board to investigate, prosecute, and try complaints against Dr. Larkin was limited to the facts of the case wherein the ultimate decision was whether or not the Doctor should be further prosecuted by the District Attorney at a civil or criminal jury trial.

With regard to this limited decision the United States Supreme Court upheld the constitutionality of the board investigating, prosecuting, and ultimately deciding the case.

- PAGE 34 -

With regard to this limited decision the board was the ultimate arbiter of the facts and conclusions of the case subject only to review for abuse of discretion pursuant to Ch. 227, Wis. Stat.

However, under the Florida procedure for removing judges while the findings of the Commission are given "great weight", the ultimate responsibility of making a determination rests with the Florida Supreme Court who may accept the Commission's findings and recommendations or may "wholly reject" them. In re Kelly, 238 So.2d 565.

The due process problem with this procedure is the fundamental unfairness of having the individuals on the Florida Supreme Court determine the ultimate facts without personally hearing the testimony of those involved.

In the State of Florida jurors in civil cases are instructed as follows:

BELIEVABILITY OF WITNESSES

a. General considerations

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony

of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Florida Standard Jury Instructions in Civil Cases, Instruction 2.2.

Jurors in criminal cases are given the following similar instructions (emphasis added):

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witness acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about the which the witness testified?

2. Did the witness seem to have an accurate memory?

3. Was the witness honest and straightforward in answering the attorney's questions?

4. Did the witness have some interest in how the case should be decided?

5. Does the witness' testimony agree with the other testimony and other evidence in the case?

If the Florida Supreme Court is going to ultimately decide the facts of the Respondent Judge's case, it is only fair that they hear the testimony of the witnesses and conduct the trial. The review of a cold transcript does not

allow them to consider the very important matters of credibility with respect to how the witness acted as well as what they said and whether or not the witness was honest and straightforward in answering questions.

Any judge who has conducted a nonjury trial will appreciate the crucial importance of actually seeing and hearing the witnesses

in determining who is telling the truth. Indeed, the superior advantage of the trier of fact is the reason appellate courts give enormous deference to the findings of fact made by trial judges and forms the basis for instructing the jurors that they may believe or disbelieve all or any part of the evidence or testimony of any witness. Such findings will be overturned only where they are clearly erroneous. Anderson v. City of Bessemer City, NC, 470 US 574, 575 (1985).

Under the Florida procedure for removing elected judges from public office, the Florida Supreme Court as the ultimate arbiter of fact does not see or hear the testimony of the Respondent or his detractors.

The Respondent Judge is confident that the Florida Supreme Court would believe him and not his political opponents if they only had the opportunity to see them squirm as they give their false, vindictive, and untrue testimony. However, he is equally confident that the JQC as it is currently impaneled will believe them not him.

Fundamental fairness requires those who will decide the truth to hear the testimony.

Respondent would bring to the Commission's attention the report of a United States Senate debate concerning a proposed Senate rule to allow a subcommittee to try articles of impeachment brought against Judge Harold Louderback. The debate on the rule revealed considerable doubt about its constitutionality. Echoing the demand for live testimony during the Louderback trial, Sen. Hiram Johnson insisted that:

> "(A) trial of the questions of fact . . . depends quite as much upon the witnesses who are called, their appearance on the stand [and] their mode of giving testimony." 78 Cong. Rec. 9432 (1934). Johnson asked whether in "a matter of such grave concern the importance, it is well for us to indulge in a trial, as it were, vicarious in character, which really will be conducted by a committee?" Senator Borah of Idaho went further, stating that "the Senate is the body which tries the respondent, not a subcommittee or a committee of the Senate; and therefore the respondent would be entitled to a full trial in every respect before the entire Senate if he should ask for it." 78 Cong. Rec. 9928 (1934); see also id. at 9929 (remarks of Sen. Fletcher).

Nor is a commission summary or "recommendation" of the evidence an adequate substitute for hearing the witnesses. Any summary is necessarily the product of editorial judgements. Furthermore, no report can provide the demeanor evidence essential

to evaluating conflicting testimony. As James Wilson remarked, jurors "hear everything that is

alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge the weight due to such testimony." Documentary History of the Ratification of the Constitution, (M. Jensen ed. 1976), at 573; accord, e.g., Universal Camera Corp. v. National Labor Relations Bd., 340 U.S. 474, 495-96 (1951); United States v. Nelson, 476 F.2d 254, 256 (9th Cir. 1973); NLRB v. Dinion Coil Co., 201 F.2d 484 (2d Cir. 1952) (Frank, J.). One must see and hear the witness in order to evaluate credibility.

CONCLUSION

GROUND ONE - SECOND DUE PROCESS ARGUMENT

Because the individuals who ultimately decide the facts of respondent's case do not personally view or hear the evidence the Florida procedure involving the very important issues of the removal of elected public officials is a violation of State and Federal due process of law.

AS TO GROUND ONE

THIRD DUE PROCESS ARGUMENT

Due process of law does not deny fundamental fairness or shock the universal sense of justice. Kinsella v. United States, 361 US 234. It represents a realistic and reasonable evaluation of the respective interests of the parties involved under the circumstances of the particular case. Dobkin v. Chapman, 236 NE2d 451. It is "a law which hears before it condemns; which proceeds upon inquiry, and renders

judgement only after trial." Trustees of Dartmouth College v. Woodward, 17 US 518.

Due process requires that a person shall be allowed to be heard, that the determination be reasonable, and that the determination be free from the opportunity for arbitrary power. Noyes v. Erie & Wyoming Farmers Co-op, 10 NYS2d, rev'd on other grounds, 22 NE2d 334.

The requirements of due process frequently vary with the types of proceeding involved. Hannah v. Larch, 363 US 420. What procedures due process may require must begin with a

determination of the nature of the governmental function involved and the private interest affected. Fusai v. Steinberg, 419 US 379.

In this determination the courts must consider three factors: First, the interest that will be affected; second, the risk of any erroneous deprivation of that interest; third, the probable value of additional or substitute procedural safeguards; and, finally, the fiscal or administrative burdens that additional or substitute procedural requirements would entail. Mackey v. Montrym, 99 S Ct 2612.

A realistic evaluation of the Florida procedure for the removal of judges should shock the universal sense of justice.

A judge is required by the Florida Code of Judicial

Conduct with establishing, maintaining, and enforcing high standards of conduct in the court. Florida Code of Judicial Conduct, Canon 1. He must require lawyers to be patient, dignified, and courteous. Florida Code of Judicial Conduct, Canon 3. Accordingly, he must occasionally criticize lawyers and others in his court.

He angers a great many people each day he works. He puts people in jail, he takes away their driving licenses, he fines them money, and sometimes separates them from their spouse, children, or parents.

In Florida he is an elected official. Some envy him. Others are offended by his authority. Many want his job.

The invitation and encouragement for false claims of unethical conduct is overwhelming. Indeed the State of Florida which has approximately 800 judges receives almost 400 complaints each year (Ex 137).

The motivation for biased, prejudiced, and false testimony is equally great.

The judge is then faced with a procedure where 13 politicians and political appointees representing some of the very groups he must control and criticize investigate, prosecute, try and determine the truth of the complaints made against him. It takes only 9 members of this group to find him guilty.

The without personally hearing the evidence another

group of 7 elected officials by a majority vote of 4 members may remove the judge from office.

The procedure thus stated does not reasonably insure that it will hear before it condemns, proceed upon inquiry or render judgement only after trial. Indeed the conduct of the JQC in this particular case suggests that the JQC has already made its decision and that the Respondent has little if no chance of having his testimony believed.

This procedure does not provide for a reasonable determination of the facts and in conjunction with the vague rules of conduct which even the Committee on Standards of Conduct Governing Judges do not agree upon offers a ripe opportunity for arbitrary exercise of power.

Respondent suggests that if the State of Florida does not want to impeach its judges that at a minimum it should provide for a jury trial of the issues.

In suggesting this the Respondent looks first at the interest that is affected. The interest affected is the very serious business of removing elected officials from office and disenfranchising the citizens who voted for them in a free and democratic election.

Secondly, Respondent looks at the risk of an erroneous deprivation of the interest involved. In Wisconsin, the risk of an erroneous decision by the Board of Medical Examiners is the temporary suspension of a doctor's license for a maximum

of six months. In Florida an erroneous decision by the Florida Supreme Court and its "arm" and "intermediate agency," the JQC, is a denial of the people's right to elect the public official of their choice.

Thirdly, Respondent looks at the additional burden either fiscal or administrative which the additional or substitute procedural requirement would entail. Ironically, requiring a jury trial after a JQC recommendation (analogous doctor's license) would be less of a fiscal or administrative burden.

Instead of a trial involving the attention of 2 appellate judges, 2 circuit judges, and 2 county court judges which are all paid salaries greater than $80,000.00 a year, the jurors would be composed of citizens drawn from the jury pool and paid according to the rates provided by Statute.

CONCLUSION

GROUND ONE - THIRD DUE PROCESS ARGUMENT

When all circumstances are considered as a whole, the Florida procedure does not insure a fundamentally fair procedure free from the danger of arbitrary control.

The procedure could be made fair by the simple inclusion of the right of a respondent judge to a jury trial of unbiased impartial jurors, the same jurors that have for many years decided equally complex issues involving legal and medical malpractice claims.

- PAGE 43 -

Surely due process requires as safe or safer a method of removing elected public officials in the State of Florida than the method provided for the revocation of doctors' licenses in the State of Wisconsin.

In that case a doctor complained that he did not think it was fundamentally fair to have his prosecutors also try him. IN ruling against him the United States Supreme Court stated that the combination of investigative and adjudicative functions **without more** does not constitute a due process violation. Larking at 58.

The Court also stated that, "Of course, we should be alert to the possibilities of bias that may lurk in the way **particular**

procedures actually work **in practice**. Larkin at 51. (Emphasis added.)

Respondent's position is that taken as a whole and as applied to him in particular the scheme authorized by the Florida Constitution and the Florida Code of Judicial Conduct under a realistic appraisal of psychological tendencies and human weaknesses poses too high a risk of actual bias or prejudgment and must be forbidden.

AS TO GROUND TWO

SUBSTANTIVE DUE PROCESS

A law must be definite to be valid. 16 AmJur2d §717, To be constitutional it must set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with it. Arnett v.

Kennedy, 416 US 134.

The applicable law related to this case is the Florida Code of Judicial Conduct. The Committee on Standards of Conduct Governing Judges is a committee of 10 judges who upon request

provide written opinion on the application of the Florida Code of Judicial Conduct.

The committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions issued by the committee. Petition of the Committee on Standards of Conduct for Judges, 327 So.2d 5 (Fla. 1976).

However, when Respondent and other judges request opinions from the Committee on Standards of Conduct governing Judges, even these experts cannot agree on what the Florida Code of Judicial Conduct means (Ex 126, 128, 129 and 130).

Furthermore, when United States Supreme Court Justices criticize the bar, it makes the Law Review Journals. When

Respondent does the same thing, it is interpreted by the Commission as a violation of the Code of Judicial Conduct and

becomes a formal charge (Ex 109, charge 1A).

When attorneys in the Federal Courts abandon their clients on appeal, the Federal Rules are changed to make them stop (Ex 122). When Respondent reminds an attorney under the same circumstances of his Oath of Admission, again under a tortured interpretation of the Code it becomes a formal charge (Ex 109, charge 3C).

Then in what appears to be a mares nest of trivial examinations, the Respondent is allegedly subject to the humiliation of a reprimand or impeachment from his elected office for such egregious conduct as requiring probationers to obtain bicycles if they have no transportation or for stating in court that "You cannot separate law from morality".

A provision of law violates the substantive due process rights of the Federal Constitution where its language does not sufficiently define proscribed conduct so that men of common intelligence must guess at its meaning. Keyshan v. Board of Regents, 385 US 589.

Not only must men of common intelligence guess at the meaning of the Florida Code of Judicial Conduct but also the expert judges assigned to the committee charged with interpreting it. Accordingly, the Code is so vague that it denies Respondent his State and Federal right to substantive due process of law.

Having no constitutional authority to enforce, the

Commission is without jurisdiction and the charges should be dismissed.

AS TO GROUND THREE

DUE PROCESS OF LAW - JQC HAS VIOLATED ITS OWN RULES

If the state courts have acted in consonance with the constitutional laws of the state and its own procedure, it is rare that a federal court will interfere on due process grounds. Jordan v. Massachusetts, 225 US 167 (emphasis added). The courts are required to adjudicate rights by due course of law by appropriate procedure duly prescribed. Coral Gables v. Certain Lands, 149 So. 36.

The Respondent incorporates by reference the factual circumstances outlined in Ground One of his Amended Motion to Dismiss.

In summary, the Respondent had 32 days to prepare for 25 additional charges of misconduct involving events some which related back to incidents **four** years in the past. He was also limited to 5.6 minutes per charge to explain 32 separate and complicated charges.

Respondent objected to the above stated facts and circumstances and refused to participate in what was an obviously superficial and unreasonable "opportunity" (Ex 115, P 39, L 10).

The JQC is required by its own rules to afford a respondent judge a **reasonable opportunity** to make a statement before the Commission to explain, refute, or admit the

conduct under investigation (FJQCR 6[b]).

CONCLUSION

GROUND THREE

The JQC failed to provide a reasonable opportunity as required by its own Rules. It thus violated the procedural due

process rights of the Respondent and cannot proceed with formal charges unless and until it complies with its own Rules. Having failed to abide by its own Rules, the JQC denied Respondent his procedural due process rights protected by both the State and Federal Constitution.

AS TO GROUND FOUR

DUE PROCESS OF LAW - BIASED TRIBUNAL

An essential element of due process of law is an opportunity to defend in an orderly proceeding. McDaniel v. EcElvy, 108 So. 820 (Fla. 1926). The tribunal must be a fair and impartial one. Nebraska Press v. Stuart, 427 US 539; Federal Construction Co. Curd, 177 P 469. More specifically, individuals exposed to administrative proceeding of a quasi-judicial nature have a right to be tried by an unbiased and impartial board. Gibson v. Berryhill, 411 US 564.

The Respondent incorporates by reference the facts and argument with respect to Ground One. In summary, the Commission is composed of elected officials and political appointees who represent groups having inherently adverse interest and who are subject to political pressure from the press and the organized bar.

Furthermore, it has demonstrated its bias by its unreasonable and unfair treatment of the Respondent including its denial of a reasonable opportunity to prepare or present his case. The Commission has also demonstrated its bias by refusing to answer reasonable voir dire questions related to possible conflicts. Furthermore, its executive secretary has answered questions for the press and the organized Bar that it would not answer for the Respondent.

Finally, the Commission on at least two occasions met to consider Respondent's case. Present at both hearings were Commissioners Frank and Freeman (Ex 106 P 1 and 115, P 1).

During the May 18 meeting and subsequent to the July 31 meeting the Commissioners discussed in secret and ex parte the Respondent's case (Ex 106, P 18, L 7 and Ex 109, P 1). it is reasonable under the FJQC Rules to believe that prior secret and ex parte discussions were had concerning Respondent's case and involving Commissioners Frank and Freeman.

At the July 31 meeting Commissioner Freeman voluntarily recused himself for prejudice (Ex 115, P 47, L 16). Subsequently Commissioner frank recused himself for prejudice (Ex 117).

CONCLUSION

GROUND FOUR

Where the members of a tribunal trying a judge are composed of members representing groups which the judge is

duty bound to criticize and control and where the judge is charged with inappropriately criticizing members of those groups and where two of those thirteen members on a commission participate in the investigation and discussion of a respondent judge's case including meetings for the purpose of filing a notice of investigation and the filing of formal charges, knowing and admitting that they are prejudiced against the respondent, the respondent is denied an opportunity to be tried by an unbiased and impartial board thus denying his State and Federal due process rights.

AS TO GROUND FIVE

FREEDOM OF SPEECH

The JQC has formally charged the Respondent with two counts of improper public statements made in his capacity as an elected public official.

Charge 1A states that:

> In an article published September 15, 1988, in St. Petersburg Times, several weeks before the election for the State Attorney, you are quoted as saying "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving, basically because they are doctors and lawyers." According to the report, you refused to discuss specific cases.

Charge 1B states that:

> On or about September 15, 1998 [sic], you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.

The news reports complained of are attached to

Respondent's Amended Motion to Dismiss as Exhibits 27 and 28.

The speech complained of is the type of speech which is not only required by Canon 1 of the Florida Code of Judicial Conduct but is also closely protected by the First Amendment of the United

States Constitution and Article One, Section Four, of the Florida State Constitution.

It should be specially noted that whereas the Respondent has by other charges been accused of unethical conduct for criticizing named individuals that these charges involved generalized criticism of poor conduct and favoritism in the court system.

The threat of and the actual prosecution of charges of unethical conduct for making these statements has the effect of chilling the free speech of judges with respect to the quality of courts and the lawyers who practice therein.

While the Respondent recognizes that the state has a duty to regulate in some fashion the conduct of the judiciary, the state's efforts must be subjected to an increasingly strict level of scrutiny as they move closer to impairing our first amendment values. Morial v. Judiciary Commission, 565 F.2d 295 (5th Cir. 1977).

Where, as here, a regulation goes so far as to restrict speech because of its content, there is a strong presumption that the regulation is unconstitutional. Accordingly, a court must strictly scrutinize such a regulation, requiring the state to bear the burden of showing that its regulation

is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. Widmar v. Vincent, 454 US 263.

In the case of Charles Horn v. The Florida Judicial Qualifications Commission, 110 Fla. Case No TCA 90-40122-WS Aug. 10, 1990, the Court stated that:

> This court has little trouble concluding that states need not treat candidates for judicial office the same as candidates for other elective offices. As the Fifth Circuit has noted, a state may regulate would-be judges differently, if for no other reason, because the judicial office is different in key respects from other offices. Morial, 565 F.2d at 305. For example:
>
> > [T]he contours of the judicial function make inappropriate the same kind of particularized pledges of conduct in office that are the very stuff of campaigns for most non-judicial offices. A candidate for the mayoralty can and often should announce his determination to effect some program, to reach a particular result on some question of city policy, or to advance the interests of a particular group. It is expected that his decisions in office may be predetermined by campaign commitment. Not so the candidate for judicial office. He cannot, consistent with the proper exercise of his judicial powers, bind himself to decide particular cases in order to achieve a given programmatic result.

> Id. Furthermore, in a contest between lawyers for a judicial office the integrity of which is a matter of significant public concern, a state may require candidates to maintain a higher standard of conduct than can be expected of candidates in other types of elective contests. Lawyers and judges are members of a privileged and responsible profession, and their obedience to the profession's ethical percepts may require abstention from what in other circumstances would be constitutionally protected behavior.
>
> - PAGE 52 -
>
> Nevertheless, a person does not surrender his constitutional right to freedom of speech when he becomes a candidate for judicial office. A state cannot require so much. Indeed, when a state decides that its trial judges are to be popularly elected, as Florida has done, it must recognize the candidates' right to make campaign speeches and the concomitant right of the public to be informed about the judicial candidates. As mentioned previously, only when a compelling state interest is implicated can the state burden the candidates' exercise of free speech. Even then, by compelling interest must be served by regulations so narrowly drafted and strictly applied that they do not necessarily infringe upon the candidates' first amendment rights.

Ironically, the compelling state interest, making sure that judicial candidates were not particular about particular cases is totally inappropriate to the speech of the Respondent in this case.

Indeed it appears that the Commission is especially galled that the Respondent will not state the particular examples to support his generalized statements.

On the other hand the compelling interest in protecting the free speech of judges to criticize in general terms of the health of the courts and the bar is the right of the public to know the health of their courts and attorneys from those who are in the best position to know. The free speech interest here also involves the right of the public to know which of its judges to elect and reelect.

Those who agree that our courts and the bar need reform need to hear from their judges who agree.

Requiring those judges to prove their opinions with specific examples not only fails as a compelling state

- PAGE 53 -

interest but is actually destructive to the court system.

* * *

- PAGE 61 -

* * *

AS TO GROUND SEVEN

LACK OF SUBJECT MATTER JURISDICTION

The JQC has formally charged the Respondent with three counts of engaging in ex parte communications.

Charge 6A states that:

> In June of 1991, you engaged in at least one ex parte conversation with an Assistant Public Defendant (sic) regarding State v. Barrett.

Charge 6B states that:

> In Case No. 89-385-SP, after announcing judgment for the Plaintiff in the amount of $463.36 and costs, the defendant and his counsel left the courtroom. In their absence, you advised the plaintiff that she could keep the alleged defective pump for which you had just awarded her the purchase price.

Rule 7(b) of the Florida Judicial Qualifications Commission Rules (FJQCR) provides:

> The Notice shall be issued in the name of the commission and specify in ordinary and concise language charges against the Judge and allege essential facts upon which such charges are based . . . .

Neither the conduct of the Respondent in engaging in an ex parte conversation with a public defender nor in discussing an elderly woman's well pump after her court case was ended, if true, constitutes facts violating any one or all of the Canons of the Code of Judicial Conduct.

First of all, to be ex parte a communication to a party must be taken at the instance of and for the benefit of one party only. Black's Law Dictionary, 4 ed, p 662.

Thus it must necessarily involve a communication concerning a pending case before the judge having authority to grant some relief at issue.

Furthermore, Canon 3 of the Florida Code of Judicial Conduct specifically states that ex parte communications are prohibited only with respect to "pending or impending" proceedings.

Neither charge 6A, 6B, or 6C allege that the Respondent engaged in an ex parte communication involving an issue with respect to pending or impending proceedings over which he had any authority.

CONCLUSION

GROUND SEVEN

With respect to charges 6A, 6B, and 6C, the Florida Judicial Qualifications Commission is without subject matter jurisdiction.

Respectfully submitted,

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215

Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by United Parcel Service to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000; and to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 9th day of November, 1992.

/s/ Joette M. Uzar
JOETTE M. UZAR
Judicial Assistant

DOCUMENT 45

Excerpts from Answer, Counterclaim, and Demand for Jury Trial

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91,415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

SUPREME COURT NO. 80,273

_____/

ANSWER, COUNTERCLAIM, AND DEMAND FOR JURY TRIAL

ANSWER

Respondent Judge, Honorable Gary G. Graham, in answer to the Notice of Formal Charges filed on August 7, 1992, and Amendment to Notice of Formal Charges filed on October 26, 1992, admits, denies, and alleges as follows:

Paragraphs 1, 2, 3, 4, 5, and 6 are denied except that he admits only that part of paragraph 1A which states that he "issued an apology", denying however that this ethical mistake is an example of repeated misconduct, denying that it shows a present unfitness to be a judge, and denying the jurisdiction of the Commission to proceed against him with regard thereto.

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct

is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

THIRD AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

FOURTH AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein three members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

FIFTH AFFIRMATIVE DEFENSE

As to charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

SIXTH AFFIRMATIVE DEFENSE

As to all charges occurring before the Respondent Judge's current term of office, the JQC lacks jurisdiction

for the reason that these widely publicized incidents occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

SEVENTH AFFIRMATIVE DEFENSE

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited ex parte communications.

EIGHTH AFFIRMATIVE DEFENSE

The charge against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct as contemplated in Section 17(a)(3), Article V, Florida State Constitution. The conduct did not descend into rancorous personality or verbal impropriety and represents a mare nest of trivial charge designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter jurisdiction.

NINTH AFFIRMATIVE DEFENSE

With respect to all charges occurring during the Respondent Judge's first term of office, the JQC has known the substance of these charges for years and delaying complaining of them until the evidence was old and cold and witnesses disappeared or died. The Respondent Judge is

accordingly unable to defend himself with respect to said charges and the Commission is estopped from proceeding by the theory of estoppel and latches.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the Respondent Judge with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper editorials and threats of legal action against it.

ELEVENTH AFFIRMATIVE DEFENSE

The Notice of Formal Charges fails to allege facts sufficient to establish its jurisdiction over the subject matter or person of the Respondent Judge. Specifically, it fails to allege at the time of the alleged misconduct or at any other time that the Respondent was a duly elected, qualified, and acting County Court Judge in the State of Florida.

WHEREFORE, Respondent prays that the Commission, after a hearing:

1. Declare itself unconstitutional.

2. Declare the Florida Code of Judicial Conduct unconstitutional.

3. Declare the particular proceedings against the Respondent Judge unconstitutional for having failed to

provide a Rule 6(b) hearings.

4. Declare itself biased and prejudiced against the Respondent Judge.

5. Declare the above-stated action to be a violation of the Respondent Judge's right to freedom of speech and protected by both State and Federal Constitutions.

6. Declare those charges occurring during the Respondent Judge's first term of office to be outside the scope of the Commission's jurisdiction.

7. Declare the substance of charges 6A, 6B, and 6C to be outside the scope of the Commission's subject matter jurisdiction for the reason they relate to conduct which is neither prohibited nor ex parte.

8. Declare all charges to be outside the scope of the jurisdiction of the Commission as contemplated in Section 17(a)(3), Article V, Florida State Constitution.

9. Declare the charges occurring during the Respondent Judge's first term of office to be estopped by delay and latches.

10. Declare the prosecution of the Notice of Formal Charges a politically pressured vindictive and impermissible selective prosecution.

11. Declare the charges to be null and void for failure to allege the fundamental facts establishing jurisdiction over the Respondent Judge.

12. Deny any relief whatsoever as the Commission's Notice of Formal Charges is without equity or justice.

13. Accept and recommend to the Florida Supreme Court the Respondent Judge's suggestions for reform of the various problems confronting the Citrus County justice system.

14. Extend an apology to the Respondent Judge for engaging in a regrettable inquiry which ought never have been pursued.

15. Commend the Respondent Judge for his courage and dedication which he has demonstrated in defending the independence and integrity of the judiciary.

16. Provide such other further legal and equitable relief as it deems just and proper.

COUNTERCLAIM

* * *

- PAGE 14 -

* * *

DEMAND FOR JURY TRIAL

In the event that the Commission does not transfer this case to the Circuit Court of Hillsborough County, Florida, the Respondent Judge notes that nothing contained in Article V, Section 12, Florida State Constitution, specifically states that a jury trial is not available upon demand and noting that Article V, Section 12, paragraph (f) is not necessarily inconsistent with a jury trial to determine the facts of the case, does hereby demand a jury trial to

determine the contested issues of fact. This demand is made pursuant to Fla.R.Civ.P. 1.430 and FJQCR 12 and the due process requirements of both the State and Federal Constitutions.

Respectfully submitted,

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Answer, Counterclaim and Demand for Jury Trial has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy of the foregoing has been furnished by United States Mail to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000; and to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

/s/ Joette M. Uzar
JOETTE M. UZAR
Judicial Assistant

DOCUMENT 46

Excerpts from Memorandum of Law in Support of Fourth Amended Motion to Dismiss

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91,415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

MEMORANDUM OF LAW IN SUPPORT OF THE FOURTH AMENDED MOTION TO DISMISS

* * *

NOTE: Pages 2-48 are deleted here because they are substantial identical to the Third Memorandum of Law in Support of Second Amended Motion to Dismiss found at (A 995) of the Appendix.

* * *

* * *

AS TO GROUND SIX

Intentionally Denying the Respondent

An Opportunity to Preserve a Factual or Legal Record on Appeal

The Respondent researched the constitutional issues regarding the due process objection to one body acting as investigator, prosecutor, judge and jury. He also researched the law related to unconstitutional vagueness and selective prosecution. Based on the case law including the United State Supreme Court decision in Withrow v. Larkin he set about establishing the basis for a federal constitutional challenge of the Florida Judicial Qualifications Commission and the Florida Code of Judicial Conduct.

The Florida Judicial Qualifications Commission threatened by academic and legal challenge abused the authority of its office by preventing the Respondent from engaging in meaningful discovery or proof of facts necessary to support those

challenges.

It did so by quashing depositions and trial subpoenas, refusing to compel answers at depositions refusing to allow the Respondent to proffer objections, testimony or legal argument, excluding the Respondent's witnesses and tangible evidence from trial and ultimately ruling that he could not make or attempt to prove constitutionally based affirmative defenses.

When these matters were brought to the attention of the Florida supreme Court it refused to grant the Respondent any relief.

CONCLUSION

GROUND SIX

The Commission and the Florida Supreme Court by its adverse legal, evidentiary and procedural rulings have denied Respondent his right to make or preserve a factual basis and record on appeal to support his constitutional challenges and thus have denied him his right to due process of law as protected by both the State and Federal Constitutions.

AS TO GROUND SEVEN

Constitutional Challenges Set Forth in

Respondent's Federal Lawsuit

The Respondent incorporates by reference all arguments contained in his various pleadings on file as part of his first

Amended Complaint for injunction and Declaration Relief filed in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B attached hereto as Exhibit 173.

CONCLUSION

GROUND SEVEN

The charges against Respondent should be dismissed for the reasons stated in his Federal lawsuit Case number 93-137-CIV-T-17B.

Respectfully submitted,

HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq., Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

DOCUMENT 47

Excerpts
from
Petitioner's Show Cause Response
Pages 189 - 193

Note: This excerpt includes a transcription of proceedings where defendant Douglas was originally instructed not to contact his children as a condition of his second period of probation.

It also contains the State's response to defendant's motion to Stay Pending Appeal filed with the Appellate Court.

This document is reprinted verbatim. However, incorrectly placed margins in the original document have been reformatted for easier reading.

* * *

CHARGE 2 P

The Commission charges:

P: In State v. Douglas, Case NO. 90-8778-MM, as part of your sentence, you entered an order prohibiting Douglas from having any contact with his children.

The Commission found that:

> The Commission finds that Respondent was the presiding judge in State v. Douglas, in which the defendant was charged with misdemeanor battery on his estranged spouse. As a special condition of probation, Respondent prohibited the defendant from having any contact with his children. Under the circumstances of this case, Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.
>
> The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 12).

That's it. The clear and convincing evidence is in the Court file, (Commission Exhibit 12) in evidence. Let's look at it.

The defendant was ordered to have no contact with the children as to count two of the information filed in Case No.: 90-8778-MM.

Count two informed that:

- PAGE 190 -

COUNT TWO

> and the Assistant State Attorney upon his oath aforesaid, further information makes that JAMES EDWARD DOUGLAS, aka, BUDDY DOUGLAS in the County of Citrus, and the State of Florida, on the 28th day of September, 1990, in the County and State aforesaid did unlawfully and willfully enter or remain in a structure or conveyance, to wit: DWELLING, the property of OWNER JOHN BRESNAHAN IN CARE AND CONTROL OF DEENA BRESNAHAN DOUGLAS, located at or near 5701 S. PINETREE POINT, LECANTO, FLORIDA, without being authorized, licensed or invited to do so by the owner, lessee or their agent, and at the time of the entering or remaining the said property was occupied by DEENA BRESNAHAN DOUGLAS, GLENN SIVIA, JENNIFER DOUGLAS AND JULIE DOUGLAS, a human being, in violation of Florida Statutes 810.08(1) and 810.08(2)(b);

Jennifer and Julie Douglas were the victims of the crime of trespass to an occupied structure. Jennifer and Julie Douglas are Mr. Douglas' children.

There is substantial case law holding that a judge may impose as a condition of probation that a defendant not have contact with his victims.

The Respondent, however, did not immediately impose this condition of probation. This condition was imposed only after conflicts surrounding the defendant's visitation caused him to violate his original probation.

The transcript of the probation violation sets forth the Court's reasoning:

> MR. DOUGLAS: Yes sir.
>
> COURT: I'll accept your plea. On your two new periods of probation. You have to finish Domestic Violence; you have to spend the five weekends in County Jail. I hope that's to get your attention that I'm serious about this probation. And you're not to have any contact with Deana Douglas or her family. Do you understand that? You're not
>
> - PAGE 191 -
>
> to call them on the telephone; you're not to be where they live or where they work; you're not to write them a letter.
>
> MS. WILEY: Your Honor, what about his children?
>
> COURT: I'm considering telling him he's not to have any contact with them because you've got to understand this is in the context of a

criminal case. He has threatened this woman; he battered her; he trespassed to her home, and he committed a criminal mischief. Then he was placed on probation and during that period of probation he has called her up and had contact with her in violation of the court's order, refused treatment for Domestic Violence, and threatened her life. And the excuse for all this was his children, and I think it's a reasonable and necessary part of the new period of probation to remove that element from the entire situation because otherwise I think he's going to be calling her again, threatening her again, back in this court, and back in jail.

MS. WILEY: But two and a half years of no contact with his children, Your Honor?

COURT: Sir, I'm going to order completely no contact with the in-laws or her children for the first year of probation.

MR. DOUGLAS: Sir, I didn't do nothing wrong. You're doing just what these people want you to do.

COURT: Sir. What I wanted you to do was go out and receive health counseling at Marion Mental Health for Domestic Violence. For two months, you ignored that.

MR. DOUGLAS: No, sir. I did it.

COURT: I asked you --

MR. DOUGLAS: You asked me for proof. I didn't have no proof. I told my lawyer -- I dais she can call 'em but --

COURT: I asked you not to call this lady. I asked you not to call her parents. You did it.

- PAGE 192 -

MR. DOUGLAS: You told me also to pick up my kids and daycare, and they wouldn't let me.

COURT: Well, you should have handled that through your attorney.

MR. DOUGLAS: I tried to. At that point I got the letter.

COURT: Well, I'm not going to put you back in the same situation you have already failed at and also tried to commit suicide in. So, you know, I'm not going to go back to the same situation that's been a total failure and resulted in not only your violation of probation but in that man's new charges on criminal offenses. I'm not going to go back to the same situation. That has been a total failure. the only thing I can think of to keep you out of trouble is just to say "Stay away from everybody."

When the Defendant appealed this ruling, the State of Florida fully supported both the wisdom and legality of the sentence, and filed the following response to the Defendant's request for a stay pending appeal:

The State of Florida, by and through the undersigned Assistant State Attorney, respectfully moves the Appellate Court to deny the defendant's request for a Stay Pending Appeal and as grounds states:

1. On December 3, 1990, Defendant entered a plea of nolo contendere to the substantive charges Battery, Trespass to an Occupied Dwelling and Criminal Mischief.

2. The Defendant was sentenced to 12 months probation on Count I-Battery, 6 months probation on Count II Trespass to Occupied Structure consecutive to Count I, 6 months probation on Count III- Criminal Mischief, consecutive to Count II. One of the conditions of probation, was that the defendant have no contact with his ex-wife, Deanna Douglas, or her family and that he must pick the children up at daycare.

3. An Affidavit for Violation of Probation was filed January 18, 1991. One of the basis for the violation was that the Defendant harassed his ex-wife, Deanna Douglas and her family with phone calls and at the day care center.

4. On March 18, 1991 a hearing was held on the Defendant's Violation of Probation. The Defendant was found guilty of the violation and further that the defendant had harassed his ex-wife and family, had not obtained a mental health evaluation or counseling and had threatened violence. The Court revoked the probation and ordered the defendant have no contact with Deanna Douglas or her family or his children.

5. The Defendant demonstrated both in the original charges and in the conduct which predicated the violation of probation a tendency to demonstrate violence toward his ex-wife and her family over the children.

6. The Trial Court may in its discretion impose those conditions of probation it feels are necessary to protect the victims of the offenses. The children were named victims in Count II Trespass to Occupied Dwelling.

7. The Trial Court imposed upon the Defendant the condition that he no longer have any contact with his children only after he violated his probation by demonstrating his continuing harassment and threats toward his ex-wife and her family.

WHEREFORE the State of Florida/Appellee respectfully requests that this court deny the Defendant/Appellant's Motion for Stay Pending Appeal.

_____

Lisa M. Porter

Thus, the State of Florida, is on record as having been in full legal agreement with the order. The status of the children as victims and the extent of violence related to the continuing relationship with the father is set forth in the Grandmother's chilling testimony at the hearings:

DIRECT EXAMINATION BY JUDGE GRAHAM

Q Ms. Bresnahan, how long have you lived in Citrus County?

- PAGE 194 -

A Almost 15 years.

Q Do you know an individual by the name of James Edward Douglas?

A Yes, I do.

Q And how are you related to him, or how do you know him?

A He is my ex-son-in-law.

Q In other words, he was married to your daughter at one time?

A Yes he was.

Q Do you have grandchildren?

A Yes, I do.

Q And is Mr. Douglas the father of your grandchildren?

A Yes, he is.

Q Were you familiar with all the charges related to the criminal prosecution of Mr. Douglas, including trespass to an occupied structure, back in 1990?

A Yes, I do.

Q Are you familiar with the sentence of that court where, as victims of the crime of trespass to an occupied structure, I would not allow him to have any contact with his children?

A Yes, I do.

Q Do you believe that that was appropriate under all the facts and circumstances known to you?

A Absolutely, Absolutely.

Q Would you share with the Commission the facts and circumstances know to you at the time?

A My son-in-law---

MR. BOSTIC: Wait. Excuse me. I'm going to object to a hearsay witness coming into the courtroom, who is obviously related to one of the parties in the Douglas proceeding, going on about the marital problems between Mr. and Ms. Douglas. The court file is in evidence. It's on Judge Graham's - it's on the podium. It's approximately an

inch thick, and I think the Commission can determine whatever it's going to determine from the court file.

THE CHAIRMAN: Well I certainly will not allow hearsay. If the witness is going to testify to her personal observations as to any alleged misconduct of Mr. Douglas with his children, and the judge was made privy to that, I think that's an issue that the Commission should consider. So you may answer, but be mindful, Judge, we don't want to hear hearsay.

BY JUDGE GRAHAM:

Q Ms. Bresnahan, to the best of your ability, avoiding anything that was told to you, how did Mr. Douglas treat your grandchildren? Share that with the Commission.

A The Children were put through severe emotional stress. My granddaughter constantly was sick to her stomach, severe headaches, every time she had to visit her father. She was exposed to violence against her mother. When he had them at his apartment, he would call the mother and cuss her out, call her every

name in the book, The children have heard him threaten to kill --

MR. BOSTIC: Objection. That's hearsay.

THE WITNESS: No, sir. It is not hearsay.

THE CHAIRMAN: Madame Witness, please --

THE WITNESS: He has --

THE CHAIRMAN: Madame Witness, would you just hold on for one second?

THE WITNESS: Excuse me.

THE CHAIRMAN: When they make objections, the Chair has to rule on them.

THE WITNESS: I'm sorry.

THE CHAIRMAN: I understand how you feel about it, but just hold on for one second.

- PAGE 196 -

The objection as to the hearsay basis is correct. I am only going to allow her to testify to her personal observations, not what was told to her by anyone.

BY JUDGE GRAHAM:

Q Okay. Now, you were trying to talk about when he had threatened to kill them?

A He--the children--

JUDGE GRAHAM: I'm going to lay the predicate.

MR. BOSTIC: Objection. Those words never came out of that witness' mouth.

THE CHAIRMAN: Right. Judge, you are leading. I think the proper thing is to first establish a predicate. Did she observe him say or do anything?

BY JUDGE GRAHAM:

Q Did you observe him say or -- threaten to kill you daughter?

A Yes –

Q Share that with the Commission

A --on many occasions.

Q And tell them what he would do.

A He would call the office where my daughter worked with me. I would listen to the telephone conversations, as did the Sheriff's Department, and -- where he would threaten to kill her in many different ways. Her, my husband, and myself.

Q Would he describe how he was going to doit? [sic]

A Yes, he would. In great detail.

Q Share that with the Commission.

A He even -- well, it would be hearsay.

THE CHAIRMAN: Well, thank you for making –

Q Well, the times that you would listen.

A He told my daughter that he would cut my daughter from her privates to her throat.

- PAGE 197 -

Q Did he use the word "privates"?

A No, he did not.

Q What word did he use?

THE CHAIRMAN: Well, I – that's not necessary. The Commission can understand what she's saying.

JUDGE GRAHAM: No. This shows what kind of fellow Douglas is.

THE CHAIRMAN: Well, I am not going to allow that --

JUDGE GRAHAM: He's not a fellow that says "privates."

THE CHAIRMAN: Well, I am not going to allow that in the courtroom. This Commission understands what he was saying. Please continue with your questioning.

JUDGE GRAHAM: May I make a note for the proffer?

THE CHAIRMAN: You can proffer that at a later time.

A He said he would cut her from her privates to her throat and that he would then call her father over and take care of him and then he would come after me. And this was done on many occasions. Another time he called and said he was going to set her privates on fire.

The children have heard him say these things. The children have seen him attack their mother. The children have been sick every time they have to go visit him to the fact where i have taken the children to doctors for shots for headaches and stomachaches.

Q Have your children -- your grandchildren -0- had to undergo psychological counseling for their trauma?

A They have been in counseling for over a year and a half.

Q And are they still in counseling?

A Yes, they are.

Q Do you think I did right by the children and the defendant to separate them?

A That's the only time they weren't sick., Judge, is when they didn't have to go.

- PAGE 198 -

JUDGE GRAHAM: No further questions.

MR. BOSTIC: No questions.

THE CHAIRMAN: Commissioner members, any questions? Judge Baskin?

COMMISSIONER BASKIN: How old were these children?

THE WITNESS: At the time it first started, four and six.

THE CHAIRMAN: Judge Burnstein?

COMMISSIONER BURNSTEIN: In the civil action where your daughter and her husband were divorced, was there a restriction with regard to visitation or -- how was that?

THE WITNESS: No, there wasn't. My daughter wanted her husband to have a good relationship with the children. She didn't know that he would do the things he did. She had a good relationship with her father, and she wanted her children to have the same. She did not want to deprive them of their father.

THE CHAIRMAN: Any other questions of the Commission? Judge Gillman?

COMMISSIONER GILLMAN: What structure was he charged with trespassing?

THE WITNESS: He broke into my home. My husband and I went on vacation. We were scared for our daughter, because he had gone to her house and tore down her carport and her mailbox with his truck and -- you know, the threats. So we asked her to stay at our house while we went on vacation.

And he had gone to pick up the children at day care. From there, he should have gone to his residence. He didn't. He came to my house, put the children over a locked gate, and had the children at the door. He banged on the door, woke her up. She came to the door, saw the children. She opened the door, because she saw the kids, and he grabbed her and slammed her against the wall, and the children are standing there watching this. One of the children ran and hid under the table by the pool.

THE CHAIRMAN: Were you in court when Judge Graham restricted the visitations of the father towards the children?

THE WITNESS: Yes, I was, because -- we were there on a violation of probation where he had threatened -- called up and threatened to kill me again.

THE CHAIRMAN: So that all was being handled at one time?

THE WITNESS: Yes, sir.

THE CHAIRMAN: And so the judge not only heard the trespass but the alleged violation of probation?

THE WITNESS: I believe so.

THE CHAIRMAN: And you brought out the facts that you've just related to the Commission?

THE WITNESS: Yes.

This is incredible. A decent judge bending over backward to keep a fellow out of jail and on probation, trying to keep him from committing suicide and killing his ex-wife and children, and the JQC wants him removed from office because a circuit level appellate court intellectually disagrees with both the judge and the State of Florida concerning the ability of the Court to deny contact to the victims of count two, trespass to an occupied building.

Frankenstein strikes again!

The Commission has failed to prove by clear and convincing evidence that the Respondent's conduct was anything other than an honest error of law. It's findings and recommendation should be rejected.

DOCUMENT 48

Transcript of *State v. Douglas*

Entered into evidence as Exhibit 119

Subject of Charge 2P (A 691) for which Petitioner was in part removed from office. (A 40)

Deleted from the beginning of the transcript is the portion dealing only with the defendant's qualification for the appointment of a public defender.

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR CITRUS COUNTY

STATE OF FLORIDA,

Plaintiff,

vs.

Case No.: 90-8778-MM-01, 90-8778-MM-02, 90-8778-MM-03

JAMES EDWARD DOUGLAS,

Defendant.

PROCEEDINGS: Motion Hearing

BEFORE: Honorable Gary Graham
County Court Judge

DATE: April 17, 1991

PLACE: Old Citrus County Courthouse
Inverness, Florida 32650

REPORTED BY: Robin C. Royal
Deputy Official Court Reporter
Notary Public

APPEARANCES: Lisa M. Porter, Esquire
Assistant State Attorney
Appearing on behalf of:
the State of Florida

Peggy J. Wiley, Esquire
Assistant Public Defender
Appearing on behalf of:
the Defendant

LOIS C. DAVIS & ASSOCIATES
OFFICIAL COURT REPORTERS - FIFTH JUDICIAL CIRCUIT
CITRUS COUNTY COURTHOUSE
INVERNESS, FLORIDA 32650

GARY G. GRAHAM NO. 91-415

EXHIBIT 119 EVIDENCE

- PAGE 2 -

THE CLERK: State versus James Edward Douglas.

* * *

- PAGE 8 -

* * *

THEREUPON,

JAMES EDWARD DOUGLAS,

the Defendant herein, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WILEY:

Q Please state your name for the record.

A James Edward Douglas, Jr..

Q Mr. Douglas, were you divorced from Deena Douglas on November 19, 1990?

A Yes, ma'am.

Q And in your divorce settlement, were you awarded visitation rights with your children?

A Yes, ma'am.

MS. WILEY: Your Honor, at this time, I would like to introduce in evidence a certified copy of the Final Judgement of Dissolution of Marriage.

MS. PORTER: Your Honor, may I see it?

MS. WILEY: (Complying.)

BY MS. WILEY:

Q Mr. Douglas, have you been able to visit your children as provided in the divorce decree?

A No, sir, ma'am.

Q You were put on probation on December 3rd, 1990, is that correct?

A Yes, ma'am.

Q And you were ordered to have no contact with your wife -- ex-wife and her parents?

A Yes, ma'am.

Q That was approximately two weeks after your divorce was final?

A Yes, ma'am.

Q Did the Court instruct you, at the time you were put on probation, what you were to do about visiting you children?

A Yes, ma'am.

- PAGE 10 -

Q And what did the Court instruct you?

A Judge told me that I could pick them up at day care during my weekends that I get them.

And they were taken out of the day care.

Q When were they taken out of day care? Do you know?

A Not the exact date, no, ma'am.

Q Would it be correct to say, in the early part of December, sometime after you were put on probation?

Late part of November.

Q In the late part of November? Subsequent of finding that they were taken out of day care, did you contact your divorce attorney, Mr. Vaughn, and ask him what to do?

A Yes, ma'am.

Q Did you receive instructions from Attorney Vaughn?

A Yes, ma'am. He told me I could contact them after he contacted their lawyer. And said, I wasn't be (sic.) under violation of probation if I contacted them about the kids.

Q And Mr. Vaughn is your private attorney?

A Yes, ma'am.

Q Did you at anytime come back to the Court and ask Judge Graham?

A No, ma'am.

Q Did your attorney suggest that?

A No, ma'am. But, I asked if I could come back and

talk to Judge Graham.

Q Who did you ask?

A My probation officer.

Q What were you told?

A I just can't walk in there and talk to him.

Q You did not ask for a hearing to come back and talk to the Judge?

A No, ma'am.

Q At the probation hearing, it was brought out that the wife -- the your ex-wife, Deena had moved to California with the children. Do you know when they moved?

A Not the exact date, no, ma'am.

Q Can you give us an approximate --

A Right at Christmas.

Q Do you know if it was before you had the altercation with Mr. Bresnahan at the Salvation Army office on January 9, 1991?

A It was before then. Yes, ma'am.

Q Were you told that they were going to leave the state of Florida?

A No, ma'am.

Q The alteration with Mr. Bresnahan at the Salvation Army resulted in battery charges being filed by Mr. Bresnahan. Do you know the status of those charges?

A Yes, ma'am. They were dropped.

Q Who told you that?

A The District Attorney?

Q The State Attorney?

A The State Attorney.

Q The Violation of Probation Affidavit was dated January 18, 1991. Have you seen your children since you were divorced?

A I had them once or twice on weekends.

Q Have you seen your children since you were put on probation, December the 3rd?

A Yes, ma'am.

Q Have you seen them since Christmas?

A No, ma'am. I was due for Christmas. They -- I hadn't seen them. I sent their Christmas gifts out to California about a month after Christmas.

Q Did you receive any acknowledgement from Deena that she received the gifts?

A No, ma'am.

Q Deena Douglas was not present for the Violation of Probation Hearing on March 18, 1991. But, she is present today. Do you know if the children have also returned to the State?

A I couldn't tell you, ma'am.

Q You have not seen them?

A -- I don't know.

- PAGE 13 -

Q Were you ever charged with neglect or abuse, or anything concerning your children?

A I never been charged with anything, ma'am.

Q Connected with your children?

A Connected with anything, but --

Q Other than these charges you have now on this probation?

A Yes, ma'am.

Q How would you described your relationship with your children?

A Good. Bring the kids with me every weekend with me. Got a car seat in my truck. Put new seat belts in there that will hold three. And they go all over the place with me.

Q When is the last time you talked with your children on the telephone?

A It's been a good month ago.

Q Would that have been when your wife called you or when you called her?

A She told me that I could call the kids out there after I get their phone number from Cliff Travis or her attorney.

Q Her attorney gave you her phone number and said it was okay to call the children in California?

A Yes, ma'am.

- PAGE 14 -

MS. WILEY: No further questions at this time, your Honor.

THE COURT: Ms. Porter?

MS. PORTER: I don't have anything of this witness.

MS. WILEY: You can step down.

THE COURT: You can step down. Mr. Douglas, I have a question.

RE-EXAMINATION

BY THE COURT:

Q Who is Deena Bresnahan Douglas? Is that your ex-wife?

A Deena Douglas, yes, ma'am. Yes, sir.

Q Who is Glenn Sivia?

A Her boyfriend.

Q Who is Jennifer?

A My daughter.

Q Who is Julie?

A My daughter.

Q Are these the two daughter you're talking about?

A Yes, sir.

THE COURT: Thank you. You may step down.

MS. WILEY: I have no further witnesses to call. Does the State wish to call any?

MS. PORTER: You Honor, Mr. Douglas' ex-wife says she wishes to make a statement. I am at somewhat of a

disadvantage, not having handled this case during the first go-around.

THE COURT: Ms. Douglas, step forward.

THEREUPON,

DEENA DOUGLAS,

the witness herein, first being duly sworn, and testified as follows:

THE COURT: Okay.

MS. DOUGLAS: Okay. From what I understand, this is to set aside the whole order so he can reserve visitation until he took it to a higher Court. Am I correct?

THE COURT: With the children -- With the victim of the crime in Count II.

MS. PORTER: I have Count II as trespass, you Honor.

THE COURT: That's right. Trespass of an Occupied Structure.

MS. PORTER: Of an occupied structure.

THE COURT: With them named as --

MS. PORTER: Okay.

THE COURT: As victims in that trespass.

MS. DOUGLAS: Okay. What happened --

THE COURT: Something, I think, which has been overlooked by the Defendant.

MS. DOUGLAS: I don't know if the Court knows this; that night he had picked them up from day care. My parents gate was locked. They were on vacation. I was there for that reason, to be safe. Okay.?

THE COURT: In their house?

MS. DOUGLAS: Yes, sir. Yes, my boyfriend was there. He returned with my children that night; which I was not to have them back until Sunday. He put them over the locked gate, knocked on the back door. I opened the door to let the children in. That's when he broke through. When he grabbed me, my oldest daughter ran. My youngest watched.

It took me two months to get my daughter to stop grabbing me the way he did. And I can't have it no more. My daughter, when I came back to Florida, didn't want to stay in the home because of him.

She has been through counseling and I just --

THE COURT: He committed the trespass and battery in front of these two children?

MS. DOUGLAS: Yes, sir. I told him, because my daughter has been through counseling at school, and I said, you know, you have got to stop for them. I says --

THE COURT: This was right after a visitation, right? He was returning the children from visitation?

MS. DOUGLAS: He was not suppose to be returning them. He came to look for trouble.

THE COURT: But, he did return them from visitation?

MS. DOUGLAS: Yes, sir.

THE COURT: Okay.

MS. DOUGLAS: And I just -- My daughter has nightmares, you know. And he has told me he would use them to hurt me. And I just can't see -- Fine, if he wants to take it higher; but, don't put the kids through this emotional -- My kids are where they can't see him. My oldest daughter is relieved.

THE COURT: Any questions?

MS. WILEY: Not of this witness, your Honor.

THE COURT: Thank you, ma'am. You can step down. Any other witnesses, Ms. Porter?

MS. PORTER: no, your Honor.

THE COURT: Any argument?

MS. WILEY: Yes, your Honor. Your Honor has pointed out that Count II is a trespass. It's a property crime.

THE COURT: Well, may I interrupt just a moment?

MS. WILEY: Yes, your Honor.

THE COURT: It's not just a property crime, because it's a Trespass of an Occupied Structure. It is not a

victimless crime. In fact, it has enhanced penalties because it does have live people there, victims.

You may continue.

MS. WILEY: Thank you. The Defendant admitted that he violated no contact with the ex-wife and the in-laws, to make arrangements for visitation, as advised by his divorce attorney, who also represented him in the criminal case. It was not a wilful violation.

The ex-wife and her parents are using the criminal court to accomplish what the divorce court would not give them; that is, to keep the Defendant from seeing his children.

The defense would submit that it's up to HRS and the Circuit Court to deal with the visitation problem, if he is to have no contact with the ex-wife and the parents.

But, by depriving him of contact with his children you are invading the children's Constitutional right to visit with their parent

and his right to visit with his children. It should be resolved in Circuit Court.

Defendants who have even abused, physically abused their children, are allowed supervised visitation. And I submit that this Court should allow Circuit Court to resolve the visitation problem.

THE COURT: Ms. Porter, how do you respond?

MS. PORTER: My I ask the Court a question regarding the violation of probation?

THE COURT: Yes.

MS. PORTER: Which I was not privy to. Did he violate his probation by having unauthorized visitation with his children?

THE COURT: He violated his probation for having harassed Deena Douglas and her family with phone calls from the day care center, after being instructed not to have any contact with Deena Douglas or her family.

MS. PORTER: At the day care center?

THE COURT: At the day care center where he was picking up the --

MS. PORTER: -- the children?

THE COURT: It was -- It involved all around these children.

MS. PORTER: Right. Your Honor, my argument, simply, would be; it appears as thought he Defendant in this case is utilizing these children, as his ex-wife said, in a manner in which to get some type of revenge or get even with the wife.

And the incident that occasioned his arrest in this case involved his children. His, then wife at the tim. Then, he violated his probation by doing the same sort of thing. Harassment, calling the day care center,

harassing the children, tormenting the children, trying to torment the wife by doing that to the children.

While it is true that the Circuit Court may have resolved the custody rights in the settlement decree in the Final Dissolution of Marriage, this is a criminal court, which is totally different and apart than what the Circuit Court has ruled regarding the settlement of the property and the custody and visitation of the children.

It's the criminal court's duty to protect the victims of crimes, to order restitution to make retribution when the defendant has caused any damages, as he did in this case.

And in particular instance, he battered his wife, he trespassed into a dwelling, in which his children were present. And battered the mother in front of the children.

And while the Circuit Court may not have been considering this particular act in the Dissolution of Marriage, it certainly is incumbent upon this Court to consider the safety, the welfare and well-being of the victims of this particular crime for which this defendant is on probation right now, after violating it before, he is still on probation.

And certainly, for the duration of his probation,

this Court has control to impose whatever conditions it feels is necessary to rehabilitate the probationer and to also protect the victims in this particular case.

And probation is a privilege. It's not a right. And if Mr. Douglas wants to forfeit the privilege of being on probation, he certainly can serve a term of incarceration in leu (sic.) of being on probation. But, to be on probation is a privilege and what goes along with it are certain conditions.

And if he cannot live up to those conditions, or fulfill those conditions, one of which includes the protection of his children, then perhaps he shouldn't be on probation. He should just simply serve the incarcerative portion of his sentence. And basically, that would be my argument, your Honor.

THE COURT: Mr. Douglas, I am going to deny your motion. I want to say a few words to the Appellate Court so they understand what I am doing.

In this case you make a motion for a stay pending appeal. I am intimately aware of this case. I have been struggling with it for a long time. I have seen the parties involved, and I have heard their testimony in Court. I have heard Mr. Douglas' testimony in Court. I have had a very good opportunity to know the kind of individual Mr. Douglas is.

I hope that the Appellate Court will read closely the letters marked as Plaintiff's Exhibit 1, Evidence 1, which was previously heard. I hope that it will consider these letters by the wife and the wife's parents.

In which case, wherein, the defendant has threatened to kill his wife. He has threatened to kill his wife's in-laws. He has called his wife a F- blanking slut in front of the children. He has armed himself. He has had dangerous weapons and has been armed with them. I have had to remove those from him.

This individual, I am convinced, this individual is a dangerous individual. I want the Appellate Court to understand that.

THE DEFENDANT: Sir --

THE COURT: I have been a, not only a County Court Judge for four years, but also a Circuit Court Judge for juvenile matters for three years. This is a case ripe for somebody getting hurt very badly.

And I gave Mr. Douglas a break when this first happened. I put him on probation. I tried to prevent any future violence by asking him to attend a domestic violence program and stay away from his ex-wife and her parents. And I did allow him visitation on his first probation.

However, it was again, this contact or visitation resulted in a direct violation of his probation; in that he started harassing and having contact with the family.

And I am convinced that, unless I keep him away from the children and family, until he has completed this domestic violence program, and had a period of time to calm down over all this, that somebody is going to get hurt.

And I am convinced that he will not be able to complete his probation if he continues to be in this position of contact with the parents and the children. He just -- At this point, he is not capable of handling that in a mature and safe manner.

I will point to the Appellate Court that these children are more than just standing by through all this. They are victims in the Trespass to an Occupied Structure.

THE DEFENDANT: Do I pay child support, then?

THE COURT: Surely, surely the Courts have a duty to protect victims against future violence. So, I hope they will read this whole file.

If they disagree with me, that's fine. I understand that. There is intellectual disagreements between Courts at times. But, I hope

that they will be very careful and very cautious, because I believe that,

if they stay, if a stay is granted pending appeal or if this Court Order is reversed on the visitation matter, I firmly believe someone is going to get hurt very badly. Next case.

(Thereupon, the proceedings were concluded.)

DOCUMENT 49

Transcript of the Testimony of Kim Amann

Note: This is the transcript of the testimony upon which the JQC solely rested its conviction of Petitioner on Charge 2K (A 38) and for which Petitioner was, in part, removed from office.

This document is Officer Amann's recollection of the March 15, 1992 court proceeding in question.

The actual transcription of those court proceedings which were made a part of the record at page 179 of Petitioner's Show Cause Response follows as Document 50.

* * *

EXAMINATION

BY MR. BOSTIC:

Q Would you please state your full name and spell your last name for the court reporter.

A Kim Amann, A-m-a-n-n.

THE CHAIRMAN: Excuse me, Mr. Bostic. Yes, Judge?

JUDGE GRAHAM: Could he recite the charge number and letter for me that we're discussing here?

THE CHAIRMAN: Could you do that, Mr. Bostic, please?

MR. BOSTIC: 2-K, I believe.

THE CHAIRMAN: Page 7?

MR. BOSTIC: Yes. 2-K.

BY MR. BOSTIC:

Q Did I ask you your business address? I'm sorry.

A 1295 South Lecanto Highway, Lecanto, Florida.

Q And what is the nature of your employment?

A I'm a sergeant-supervisor in the corrections division.

Q With the Citrus County Sheriff's Office?

A With the Citrus County Sheriff's Department.

Q And how long have you been with the Citrus County Sheriff's Office?

A Five years.

Q And what are your primary duties and responsibilities?

A To run and oversee the squad, and care and custody of the inmate population.

Q Now, when you say to "oversee the squad," what do you mean by "the squad"?

A Make sure that my officers perform the duties that they're assigned.

Q And how many officers serve under you?

A I have three under me at present.

Q And generally, what are their duties?

A Running master control, intake of inmates, printing.

Q I would like to direct your attention to March 15th, 1992, and ask you if you were employed by the Citrus County Sheriff's Office at that time.

A Yes, sir.

Q And what was --

- PAGE 1004 -

MR. BOSTIC: Just one second, Your Honor -- Mr. Chairman. I have --

Q Were you employed with the Citrus County Sheriff's Office on March 15th of '92?

A Yes, sir.

Q Where was the jail at that time?

A It was here right next to operations in town.

JUDGE GRAHAM: Excuse me. May I interrupt for just a moment? What was that date?

MR. BOSTIC: March 15th of 1992.

Q Did there come a time where you were requested on that date to go to Judge Graham's chambers --

A Yes, sir.

Q -- I'm sorry, Judge Graham's court?

A Yes, sir.

Q And how did you receive that message?

A Originally Officer Briggs was at first appearance and called over for a supervisor. At that time my corporal responded.

And my corporal arrived there, and Officer Briggs called back and said he did not want a corporal there but he wanted me there.

- PAGE 1005 -

Q Did -- were you told why he wanted you there?

A No, sir.

Q And what did you do upon learning this?

A I immediately headed for the courtroom.

Q And did you go to the courtroom?

A Yes, sir, I did.

Q Upon arriving in the courtroom, what, if anything, did Judge Graham say to you?

A When I arrived at the courtroom, I stood in front of his bench. He asked me if I was the supervisor on duty.

I said, "Yes, sir, I am."

He asked me to state my name, which I did for him. He then told me to take a look around the courtroom and tell him what I saw.

Q And what did you see?

A I did a complete about-face around the courtroom, and I told him I saw three inmates in the jury box and Officer Briggs standing by the judge's bench.

Q And what happened after you made this observation?

JUDGE GRAHAM: Excuse me. I believe the witness is looking at something.

- PAGE 1006 -

THE WITNESS: I have a copy of my report to refresh my memory.

JUDGE GRAHAM: Excuse me. I don't believe a predicate has been laid for her doing that yet. I would object to it.

THE CHAIRMAN: Judge, he does not need a predicate. Is this something that assists your memory?

THE WITNESS: Yes, sir.

THE CHAIRMAN: All right. You'll be able -- Judge Graham will be allowed to see that, to examine it, and cross-examine on the document if you so use it.

JUDGE GRAHAM: May I approach the bench?

THE CHAIRMAN: Mr. Bostic -- is this a sidebar conference?

JUDGE GRAHAM: Correct.

MR. BOSTIC: Oh, I'm sorry. I thought he was approaching the witness.

(Sidebar discussion.)

JUDGE GRAHAM: It's important to lay a predicate that a person has no current recollection, because it does, in itself, somewhat impeach their memory. And it is

required -- before they are allowed to look at something, they are supposed to lay a predicate.

THE CHAIRMAN: Lay your predicate.

JUDGE GRAHAM: They have to say, "I don't remember this now." "Will this help you?"

THE CHAIRMAN: You are correct.

(Sidebar discussion concludes.)

THE CHAIRMAN: The sidebar conference has led the Chair to reconsider its last ruling, and the objection, on the basis of the predicate, is going to be sustained, and I will not allow her to refer to that document until a proper predicate is laid.

BY MR. BOSTIC:

Q Do you have a present clear recollection of the events that occurred on March 15th of '92?

A Pretty much.

Q Then as I ask you your questions, let's -- if you will, just testify from your memory. If you can't recall something, would you first tell us you can't recall? Okay?

A Okay.

Q Now, I believe you said that you did the about-face, you turned around, you looked -- and

then what happened?

A Judge Graham then proceeded to tell me -- ask me if I realized that after he left the courtroom, that the three inmates in the jury box could jump Officer Briggs, take his handcuff key, take his weapon away from him, kill him, and no one would ever know it.

I said, "Yes, sir. I do realize that can happen."

Q Was Officer Briggs the officer who was on duty that day?

A Yes, sir. He was working transport.

Q Was Officer Briggs the only officer in the courtroom that day?

A Yes, sir.

Q And there were how many inmates?

A Three.

Q Anyone else in the courtroom other than three inmates?

A Just Judge Graham.

Q What was Judge Graham's response after -- what was your response -- I'm sorry. I don't think you said that.

You said that Judge Graham made his comment about jumping the officer and killing him,

and you said, "Yes."

A Yes, sir.

Q What happened next?

A He then proceeded to ask me why I only had one officer with first appearance, and I explained to him I was shorthanded that day.

Q What happened after that?

A He told me he was basically tired of hearing that we were shorthanded. He also said something to the effect we had a bailiff in the courtroom that stands there and does nothing all week anyway and gave me a direct court order to remove that bailiff from the courtroom and said that the next time that one officer showed up for first appearance that he would hold me in direct criminal contempt.

Q Did he tell you what he would do to you after holding you in direct criminal contempt?

A No, sir.

MR. BOSTIC: I have no further questions at this time.

CROSS-EXAMINATION

BY JUDGE GRAHAM:

Q Officer Amann, now you understand the importance of these proceedings, do you not?

A Yes, sir.

Q And you're telling this Commission that I gave you a direct court order to what?

A To hold me in contempt of court.

Q Isn't it true that you said I gave you a direct court order not to have the additional bailiff over there?

A Yes, sir.

Q And you're certain about that?

A Yes, sir.

Q Have you ever looked at a transcript of the proceedings that day?

A No, sir.

Q And isn't it true, Officer Amann, that you've left out one little thing, and that's about whether or not this request had been made before?

A To me?

Q Isn't it true that this -- the Court had requested through the deputies on prior occasions not to send over one deputy with more than one inmate. Isn't that true?

A I can't recall.

Q But you don't deny it, do you?

A I can't recall.

Q And isn't it true that the transportation

of three inmates by one deputy is a direct and clear violation of your own written policies?

A Yes, sir, it is.

JUDGE GRAHAM: No further questions.

MR. BOSTIC: I have no questions.

THE CHAIRMAN: Questions of the Commission?

Thank you very much for coming. You're released from the subpoena of Mr. Bostic. Is that correct?

* * *

DOCUMENT 50

Pages 179 - 183 of
Petitioner's Show Cause Response

Actual Transcription of the Court Proceeding for which Petitioner was, in part, Removed from Office.

This document is reprinted verbatim. However, incorrectly placed margins in the original document have been reformatted for easier reading.

PAGE 179

CHARGE 2 K

The Commission charged, and found that:

The Commission finds that on March 15, 1992, Respondent directed the bailiff in his courtroom to summon a supervisor from the Citrus County Sheriff's office to come to his courtroom to discuss court security. When the duty sergeant arrived, Respondent gave her instructions regarding the future security arrangements for his courtroom. Respondent then threatened to hold the deputy in contempt if the Sheriff did not comply with his

PAGE 180

instructions. Respondent's threatening conduct was an abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of Deputy Sheriff Kim Amann. (T. Vol. VI, pp. 1001-1011).

Based on the "undisputed" testimony of Deputy Kim Amann. Why not the transcription of the court proceedings so that the Court would know exactly what was said?? Perhaps because the exact words of the judge would sound much more reasonable than the version of Ms. Amann.

For the Court's benefit the proceedings are transcribed as follows:

PROCEEDINGS

THE COURT: Good morning, officer.

SERGEANT AMANN: (Inaudible)

THE COURT: Officer, are you in charge of the bailiffs this morning? The corrections officers?

SERGEANT AMANN: I was in charge of the jail, yes sir.

THE COURT: Okay. So what's your name?

SERGEANT AMANN: Sergeant Amann.

THE COURT: Sergeant Amann, I want you to look around this room. What do you see?

SERGEANT AMANN: Three inmates.

THE COURT: Three inmates. And what else do you see?

SERGEANT AMANN: And one officer.

THE COURT: And one officer. Now when I finish with first appearances, I'm going to get up and leave and then this officer, what's your name?

OFFICER BRIGGS: Briggs.

THE COURT: Officer Briggs is going to be in this room in this building with three prisoners and nobody else. There's not even a janitor in this whole building.

He's going to be totally, completely alone in this building with three prisoners and he has, do you have the keys to this guy's handcuffs?

OFFICER BRIGGS: Yes, sir.

THE COURT: And do you have a weapon?

OFFICER BRIGGS: Yes Sir.

THE COURT: Now do you know how easy it would be after I leave for these three guys to gang up on him, get him down on the ground, beat him senseless, or kill him with his own weapon, take the key and walk out of the door? Do you realize how easy?

SERGEANT AMANN: I realize that if they (inaudible).

THE COURT: It'd be just as easy. They could shoot him in this building and no one would even hear it outside on 41. He'd lay here head or dying for hours and the thing is you folks really don't know how many people are from Hernando or Sumter.

SERGEANT AMANN: That's right.

THE COURT: So you don't know how long he's going to be over here. There's no red flag. I have no idea how long it'd take before somebody would say, gee, where's Briggs? I wonder why first appearances are taking so long. Okay. Now it's got to stop. All right?

SERGEANT AMANN: Okay. I'll pass it on to transport sergeant.

THE COURT: Now I've told people this before.

SERGEANT AMANN: Okay.

THE COURT: Okay. Now I can't do anything about the other transport. Other people are in charge of that, but with you I can because you're here.

SERGEANT AMANN: Okay.

- PAGE 182 -

THE COURT: I'm going to give you a direct court order to never, ever allow one officer to come over here with more than one prisoner.

SERGEANT AMANN: Okay.

THE COURT: And I will hold you in contempt of court (inaudible). All right?

SERGEANT AMANN: Okay.

THE COURT: Now I'm not picking on you, all right, because the only reason I'm not saying that to the other ones, Okay, they're not here and they're not within my jurisdiction, and I haven't got a reason to do it.

SERGEANT AMANN: Uh-huh.

THE COURT: So that's the reason I'm doing it with you is I can tell you directly (Inaudible).

SERGEANT AMANN: Okay.

THE COURT: Because I'm not going to have somebody killed or hurt over here on weekend duty. All right?

SERGEANT AMANN: All right.

THE COURT: Okay. Gentlemen, step back over.

- PAGE 183 -

Ms. Amann, is there any reason why you didn't?

SERGEANT AMANN: I'm running short-handed today. Usually I do try to send somebody with first appearances but the transport squad is a different squad and they do the transports on weekends and first appearances.

THE COURT: So you're short on manpower?

SERGEANT AMANN: I'm short on manpower myself.

THE COURT: Okay. Let me say this. With the twelve million dollar budget that the Sheriff has, all right, this is the second time I've been told that a problem exists because the Sheriff's short on manpower. Last week I had a problem with finding out that there were arrests or holds on the defendants in County Court and Captain Moffatt came over here and told me she's short on manpower. Now you're telling me that you're short on manpower but I've got, Thursday and Friday of this week, Thursday and Friday of every week, I've got a Citrus County Sheriff's Deputy dressed in green who stands in this Courtroom and does absolutely nothing all day long except listen to Small Claims cases. Do you know what I'm talking about?

SERGEANT AMANN: (Inaudible)

THE COURT: The bailiff. The bailiff that's not needed because we have a Director of Courts. They insist on taking a man and put him over here to listen to Small Claims cases and then I'm told the Sheriff's short

on manpower. Take that fellow that's sitting here listening to Small Claims cases and have him do transport duty. That way nobody will get hurt and we'll stop wasting that much money. Okay?

SERGEANT AMANN: I'll pass it on, sir.

END OF THAT PORTION OF PROCEEDINGS

* * *

A 1128

DOCUMENT 51

Excerpts
from
Transcripts of the Proceedings

BY JUDGE GRAHAM:

Q Mr. Travis, would you state your name please for the Commission?

A Clifford Martin Travis.

Q And what is your occupation?

A I'm an attorney.

Q How long have you lived in Citrus County?

A I've been practicing law here in Citrus County for the past ten years.

MR. BOSTIC: Mr. Chairman, before we go forward -- Mr. Travis doesn't appear on the witness list, so I don't know the -- what charge or even broad area he relates to.

JUDGE GRAHAM: This is one of the attorneys that got his DUI case reduced to reckless.

THE CHAIRMAN: Well, is he listed on the pretrial as a witness either for the presentation that he gave me on Thursday or -- I don't see his name anyplace.

JUDGE GRAHAM: Sir, this goes directly to one of my -- one of the charges against me. This is one of the attorneys who got his DUI case dismissed and --

THE CHAIRMAN: Judge, I've told you that

I'm -- I've told you two or three times that I was only going to allow witnesses that are listed, and I can't violate my own rulings. And if he's not on the pretrial as a witness and he's not on any of your lists of witnesses that have been presented to us, I'm not going to allow his testimony. Is there anything else you have to present?

JUDGE GRAHAM: I hope the United States Supreme Court realizes --

THE CHAIRMAN: Judge, don't make comments to me, please. All right. You may stand down.

THE WITNESS: Thank you all very much.

JUDGE GRAHAM: I request that the Motion Committee rule on that and that the whole Commission decide whether or not that witness should be excluded.

THE CHAIRMAN: I have entered three orders on this Judge, and I'm not going to go through it again. And the Commission had ruled on this. This order went out. And I told you and I gave you ample warning that we were going to stay within the confines of those listed, and I'm not going to debate it anymore. If the

witness is not listed, we're not going to allow the witness to testify. Please proceed.

JUDGE GRAHAM: Can I respond to that at all?

THE CHAIRMAN: No, you may not.

JUDGE GRAHAM: Can I remind the Chair that Ms. Uzar was not listed and that Ms. Uzar -- Mr. Bostic was allowed to put on Ms. Uzar.

* * *

DOCUMENT 52

Excerpts
from
Transcripts of the Proceedings

NOTE: Following is the transcription of the case of *State v. Billy Dobbs Page* which is the entire evidence regarding Charge 3F for which Petitioner was, in part, removed from office (A 42).

For reasons unknown the JQC referred to the defendant by his middle name in its Findings (Compare A 42 with A 1133).

- PAGE 1176 -

* * *

THE CHAIRMAN: Okay. Let's proceed, then.

MR. BOSTIC: The exhibit that I intend to publish at this time, Mr. Chairman, is Exhibit 28-A. It is in the case of State of Florida versus Billy Dobbs Page, and it is allegation 3-F appearing on page 10. I do not have --

THE CHAIRMAN: Is this an audio type?

MR. BOSTIC: It's an audio tape. I do not have a transcript of the tape. . . .

* * *

- PAGE 1178 -

(Cassette tape is played.)

"THE COURT: Next case.

"MS. OSMOND: Judge, could we proceed on State vs. Densmore?

"THE COURT: We need to do Page and Parrish here first, and then we'll do Densmore. Okay?

"Are you Mr. Page?

"THE DEFENDANT: Yes, sir.

"THE COURT: Do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, I do.

"THE COURT: Do you understand the rights which were explained to you in the videotape?

- PAGE 1179 -

THE DEFENDANT: Yes.

"THE COURT: You're charged with criminal mischief, a first-degree misdemeanor. How do you plead?

"THE DEFENDANT: Guilty.

"THE COURT: You need to sign a waiver.

"Sir, on the 28th of May, 1992, did you paint graffiti on the racquetball courts?

"THE DEFENDANT: Yes, sir, I did.

"THE COURT: Okay. I find there's a -- are you entering your plea of guilty because it's in your best interest?

"THE DEFENDANT: Yes, sir.

"THE COURT: I find there's a factual basis for your plea, you've made an (inaudible) intelligent waiver of rights, and I'll accept the plea.

"MS. OSMOND: I'd like to be heard on sentencing. There is a co-defendant in this case. The co-defendant was offered a withhold of adjudication, 50 hours of community service, $650 in restitution, and an apology to the (inaudible) Citrus County Chronicle. This defendant, however, has a prior record.

"THE COURT: The Citrus County what?

- PAGE 1180 -

"MS. OSMOND: Chronicle. They're sending a letter to the editor apologizing for the damage to the citizens of Citrus County.

"THE COURT: That's the fellow that went into the -- in the U.S. Army.

"MS. OSMOND: That's correct. He -- that was the next thing I was going to say.

"THE COURT: Well, that's the only reason he got that sentence.

"MS. OSMOND: Because he's going in the Air Force is why they stayed off with that.

"THE COURT: And you have a prior record. Right?

"THE DEFENDANT: Yes, sir. I'm currently on PTI.

"THE COURT: You're on PTI. Okay. You're not as lucky.

"MS. OSMOND: He's not eligible. He would not (inaudible). I was just telling the court what the co-defendant (inaudible).

"THE COURT: You're in a lot of trouble. Citrus County isn't going to become like New York City with all that vulgarity and rudeness and crud painted on everything. You're in a lot of trouble.

"What did he paint on the walls?

"MS. OSMOND: Pardon?

"THE COURT: What did he put on the walls?

"MS. OSMOND: He put -- the equipment and the buildings were vandalized with red paint, multi-colored paint, consisting of -- obscene, simple words and phrases were painted --

"THE COURT: What kind of words?

"MS. OSMOND: -- on the racquetball courts, parts of the sidewalk, and a portion of the West Educational (inaudible).

"THE COURT: What kind of words?

"MS. OSMOND: What's sprayed? It doesn't list.

"THE COURT: What kind of words did you paint on the walls?

"THE DEFENDANT: I just -- there was a bunch of us there that night, and the reason that we (inaudible) took the fall is our President -- principal said that we weren't going to walk.

"THE COURT: What did you put on the walls?

"THE DEFENDANT: I drew a wiener.

- PAGE 1182 -

"THE COURT: A wiener. What do you mean? A penis?

"THE DEFENDANT: Yes, sir.

"THE COURT: What else?

"THE DEFENDANT: And drew it outside.

"THE COURT: What did you write?

"THE DEFENDANT: 'Leave her with a shaved beaver.'

"THE COURT: 'Leave her with a shaved beaver.'

"Madame Clerk, adjudicate him. Place him on probation for one year. Sentence him to the county jail for six months. You're required to make restitution in the amount of -- of how much?

"MS. THOMPSON: Excuse me, Your Honor.

"MS. OSMOND: Six hundred and fifty dollars.

"THE COURT: Six hundred and fifty dollars. Step forward.

"MS. THOMPSON: These kids were told by the Citrus County Sheriff's Department if they admitted to what they did and took the blame, they wouldn't be punished, and two weeks later they got subpoenaed. What he did and Chris did

- PAGE 1183 -

is nothing that every other senior doesn't do at every high school for the past 20 years. They did not hurt anybody. They are not criminals. And they admitted to doing it because they were told that things would go easy. And you call six months in jail for somebody who just graduated from high school?

"THE COURT: Do you know what his problem is? His problem is you.

"MS. THOMPSON: Oh, is it?

"THE COURT: Yes. It's not me, it's you. That's how he wound up -- how old are you?

"THE DEFENDANT: Nineteen.

"THE COURT: That's how he wound up, at 19 years old, painting male penises on public property and saying 'Leave her

with a shaved beaver.' And I can tell that by the way you're defending him.

"MS. THOMPSON: I'm defending all --

"THE COURT: I'm -- I'm --

"MS. THOMPSON: -- the seniors at the

There was 40 kids out there, and the Sheriff's Department --

"THE COURT: Ma'am, let me tell you something.

- PAGE 1184 -

"MS. THOMPSON: -- has every one of their phone numbers and names, and they never took them in.

"THE COURT: Ms. Osmond, were you a senior in high school?

"MS. OSMOND: Yes.

"THE COURT: Did you graduate?

"MS. OSMOND: Yes.

"THE COURT: Did you paint male penises on walls?

"MS. OSMOND: I would never consider that.

"THE COURT: Ms. Mallet --

"MS. MALLET: Yes, sir.

"THE COURT: -- were you a senior in high school?

"MS. MALLET: Yes, sir, I was.

"THE COURT: And as a part of your duties as a senior in high school, did you go out and write Leave it -- 'Leave her with a shaved beaver' on walls?

"MS. MALLET: No, Your Honor.

"THE COURT: How many seniors do we -- everybody who's been a senior in high school, would you please stand up?

- PAGE 1185 -

"Let's see. There's -- one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two -- twenty-three people in this courtroom -- twenty-three, twenty-four -- twenty-five people in this courtroom who have been a senior in high school. Okay?

"Now, would every senior in high school who painted a penis on a public building please sit down. Notice that no one sat down.

"A VOICE: I wasn't a senior.

"THE COURT: You didn't. You didn't.

"A VOICE: I wasn't a senior.

"THE COURT: Okay. Let the record reflect that we've got lots of seniors in this building who have not engaged in this conduct. You may all be seated.

"Ma'am -- what is your name?

"MS. THOMPSON: Chris Thompson.

"THE COURT: Trust me. The public desecration of public facilities with obscenities and vulgarities is not an accepted rite of passage even in today's society.

"Next case."

- PAGE 1186 -

(Cassette player is turned off.)

* * *

Supreme Court, U.S.
FILED
FEB 1 1994
OFFICE OF THE CLERK

Case No. 93-713

IN THE

Supreme Court of the United States

GARY G. GRAHAM,

Petitioner,

v.

THE SUPREME COURT OF FLORIDA and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT A. BUTTERWORTH
Attorney General

LOUIS F. HUBENER
Assistant Attorney General
Counsel of Record

CHARLIE MCCOY
Assistant Attorney General

DEPARTMENT OF LEGAL AFFAIRS
The Capitol – PL-01
Tallahassee, FL 32399-1050
(904) 488-9935

Attorneys for Respondents

QUESTIONS PRESENTED FOR REVIEW

ISSUE ONE

WHETHER THE RESPONDENTS VIOLATED THE DUE PROCESS AND EQUAL PROTECTION REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY SELECTIVELY ENFORCING THE CODE OF JURIDICAL CONDUCT AGAINST PETITIONER FOR IMPERMISSIBLE REASONS.

ISSUE TWO

WHETHER THE RESPONDENTS VIOLATED THE FREEDOM OF SPEECH GUARANTEE OF THE FIRST AMENDMENT BY REMOVING THE PETITIONER FROM HIS OFFICE AS AN ELECTED JUDGE IN THE STATE OF FLORIDA FOR HAVING PUBLICLY CRITICIZED ATTORNEYS.

ISSUE THREE

WHETHER THE FLORIDA CODE OF JUDICIAL CONDUCT AS APPLIED VIOLATES THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT DUE TO VAGUENESS OF CONSTRUCTION.

ISSUE FOUR

WHETHER THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION VIOLATED THE DUE PROCESS REQUIREMENTS OF THE FIFTH AND FOURTEENTH AMENDMENTS BY

ACTING AS THE INVESTIGATOR, PROSECUTOR, JUDGE AND JURY.

ISSUE FIVE

WHETHER THE CONDUCT OF THE PROCEEDINGS IN THEIR TOTALITY RESULTED IN A FUNDAMENTALLY UNFAIR PROCEDURE THEREBY VIOLATING THE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT.

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

1. The Decision of the Florida Supreme Court 1

2. The Findings of the Judicial Qualifications Commission 3

SUMMARY OF ARGUMENT 8

ARGUMENT 10

A GRANT OF CERTIORARI IS NOT WARRANTED IN THIS CASE BECAUSE THE DECISION OF THE FLORIDA SUPREME COURT ADOPTING THE FINDINGS OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION CLEARLY JUSTIFIES PETITIONER'S REMOVAL FROM OFFICE; PETITIONER'S ARGUMENT DOES NOT DEMONSTRATE CONFLICT WITH ANY OTHER APPELLATE DECISION NOR DOES IT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW AND SO FAILS TO ESTABLISH ANY BASIS FOR CERTIORARI REVIEW UNDER RULE 10.1(b) OR (c), RULES OF THE SUPREME COURT.

A. The Petition Fails To Establish That The Proceeding Below Was A Constitutionally Impermissible Instance Of Selective Enforcement Of The Judicial Code. (Petitioner's Issue I) 11

B. Petitioner Was Not Removed From The Bench For Exercising His First Amendment Right to Criticize Attorneys. (Petitioner's Issue II) 13

C. Petitioner Fails to Demonstrate That The Florida Code of Judicial Conduct Is Unconstitutionally Vague Or That The Point was Properly Preserved for Review (Petitioner's Issue III) 18

D. The Structure of Florida's Judicial Disciplinary Mechanism Does Not Violate Due Process (Petitioner's Issue IV) 22

E. The Proceeding Against Graham Was Not Fundamentally Unfair. (Petitioner's Issue V) . . . 24

CONCLUSION 28

TABLE OF AUTHORITIES

Cases ***Page(s)***

Broaderick v. Oklahoma, 413 U.S. 601, 615-616 (1973) 20

Connick v. Myers, 461 U.S. 138 (1983) 16

Gentile v. State Bar of Nevada, 111 S.Ct. 2720, 2743 (1991) 15

Graham v. Wigginton, 818 F.Supp. 336 (M.D. Fla. 1993) 27

Hastings v. Judicial Conference of U.S., 829 F.29 91, 106 (D.C. Cir. 1987) 20

In re Inquiry Concerning a Judge, re: Gary Graham, 620 So.2d 1273 (Fla. 1993) 1

In Re Inquiry Concerning a Judge: Harvey N. Shenberg, et al., 1992 WL 63094 (Fla. Apr. 2, 1992) 27

In re Kelly, 238 So.2d 565 (Fla. 1970) 25

In re Murchison, 349 U.S. 133 (1955) 23

In re Taunton, 357 So.2d 172 (Fla. 1978) 27

Judicial Inquiry and Review v. Snyder, 523 A.2d 294 (Pa. 1987) 18

Maynard v. Cartwright, 486 U.S. 356, 361 (1988) . . . 21

Morial v. Judiciary Commission, 565 F.2d 295, 300 (5th Cir. 1977) 15

Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) 17

Offutt v. U. S., 348 U.S. 11 (1954) 25

Parker v. Levy, 417 U.S. 733, 756 (1974) 21

Cases ***Page(s)***

Scott v. Flowers, 910 F.2d 201, 209 (5th Cir. 1990) . . 17

United States v. Schneiderman, 968 F.2d 1564, 1567-8 (2d Cir. 1992) 19, 21

United States v. Bassford, 812 F.2d 16, 19 (1st Cir. 1987) 12

United States v. Bustamonte, 805 F.2d 201, 202 (6th Cir. 1986) 12

United States v. McClain, 823 F.2d, 457 (11th Cir. 1987) 23

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 495 (1982) 21

Wayte v. United States, 470 U.S. 598 . . . . . 12, 13

Widmar v. Vincent, 454 U.S. 263 (1981) 16

Willhauck v. Halpin, 953 F. 2d 689, 712 (1st Cir. 1991) 12

Withrow v. Larkin, 421 U.S. 35 (1975) 23

Other Authorities

Article IV, Section 12, Fla. Const. 22

Article IV, Section 12(d), Fla. Const. 27

Article IV, Section 12(f), Fla. Const. 22

STATEMENT OF THE CASE

Pursuant to the recommendation of the Florida Judicial Qualifications Commission (the "commission"), and upon consideration of its findings of fact, the Florida Supreme Court removed petitioner Gary Graham from the office of county judge of Citrus County, Florida. Graham has filed a petition for certiorari seeking review of the Florida Supreme Court's action. The decision of the Florida Supreme Court is reported *In re Inquiry Concerning a Judge, re: Gary Graham,* 620 So.2d 1273 (Fla. 1993). It is contained in the appendix to the petition at A 3-78.[1]

1. The Decision of the Florida Supreme Court

The Florida Supreme Court's opinion states that the commission made numerous factual findings to support its conclusion that "Graham's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office." (A 4) The court did not think it necessary to set forth each particular incident but underscored several that "typified" Graham's judicial behavior. (A 5) In one instance, Graham, as presiding judge, suspended a defendant's driver's license for six months. When the defendant questioned the fairness of the sentence, Graham increased the suspension to nine months and then asked if the defendant wanted the sentence reconsidered. When the defendant answered affirmatively, Graham increased the sentence to one year. (A 5)

In a second instance, following sentencing of a defendant to six months in jail for spray painting vulgar graffiti on public property, the defendant's mother questioned the

---

1 The commission's "Findings of Fact, Conclusions of Law and Recommendation For Removal" are included in the petition appendix at A 20-62.

fairness of the sentence. In a wholly gratuitous response, Graham told the mother she was "the problem" and then engaged the courtroom audience in a discussion of the nature of the offense that the Florida Supreme Court deemed inappropriate, embarrassing, and needlessly vulgar and offensive. (A 5-6)

In a third incident, the defendant was convicted of driving under the influence of alcohol. In open court, Graham stated that a ten-day sentence would have been appropriate but for the defendant's "improper" release on his own recognizance by the sheriff's office. He then sentenced the defendant to ninety days in jail, telling him "That's what you get for trading favors to get out of the Citrus County Jail." The Florida Supreme Court found that the sentence was based on nothing more than Graham's "own allegations of political favoritism in the sheriff's office" and that Graham's "actions constituted an abuse of power and impugned the public's perception of the integrity and impartiality of the judiciary." (A 6-7)

Graham's defense, according to the court, focused on what he believed to be the misconduct of other officials, attorneys and citizens of Citrus County rather than on "the critical issue of his present fitness to serve as a judge." (A 7) Graham failed to recognize that such alleged misconduct did not "justify his repeated departure from the guidelines established in the Code of Judicial Conduct." (A 8) The "direct evidence," according to the court, revealed that "Graham's conduct was, at times, neither professional nor rational, and there was a clear abuse of judicial power to the detriment of individuals." (A 9)

The court did not lightly reach its decision to remove Graham from office. The fact that Graham refused to recognize his own transgressions and showed no remorse clearly weighed against him. (A 11) The court acknowledged that

some of the charges were more severe than others and that standing alone each individual charge might not warrant the extreme step of removal. (A 12) Nevertheless, Graham's cumulative conduct over a period of time and the totality of the circumstances led the court to conclude that Graham demonstrated a serious lack of judicial temperament. (A 12-13) His conduct therefore warranted removal.

Only one justice dissented, but even he stated he would approve the factual findings of the commission "and loudly and severely reprimand Judge Graham." (A 18) That justice also observed that Graham failed to understand that the means employed to accomplish his goals must be within the canons of judicial ethics and he described Graham's conduct in the proceedings before the commission as "deplorable." (A 15)

2. The Findings of the Judicial Qualifications Commission

The commission, by an affirmative vote of at least nine of its thirteen members, found that Graham violated Canons 1, 2, 3A.1 and 3A.3 of the Code of Judicial Conduct "by virtue of his cumulative misconduct." (A 26-27) In summary, the commission found that:

> Respondent [Graham] repeatedly used his position as Citrus County Court Judge to make allegations of official misconduct and improper criticisms against others, exceeded and abused the power of his office by imposing improper sentences and improper use of his contempt power, acted in an undignified and discourteous manner toward those appearing in his court, acted in a manner which impugned the public perception of the integrity and impartiality of the judiciary and closed and attempted to close public proceedings. The Commission further finds that Respondent's

> cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office.

(A 27)

The commission then set out in detail the factual incidents that supported its finding of cumulative misconduct. These incidents are summarized as follows:

1. Graham's broad and disparaging indictment of the behavior of local attorneys that had no reasonable factual basis. His remarks were made to a news reporter and widely reported in the local media. (A 29)

2. While presiding over a DUI case, *State v. Pfeister,* Graham, in open court, accused the state attorney of "routinely regulating" DUI offenses of lawyers and doctors to reckless driving for "no apparent reason." (A 29)

3. In the same case and during the same hearing, Graham, in open court, accused the State Attorney King of favoritism in the disposition of a DUI case while King was an assistant state attorney.

4. In the same case, Graham, again in open court, repeatedly demanded that the Chief Assistant State Attorney explain the exercise of discretion by the State Attorney's Office in charging the case as a misdemeanor rather than a felony so that Graham could ascertain that the decision was not the result of politics and favoritism. (A 31)

5. On another occasion, in open court, Graham accused the state attorney, and by implication, the chief judge of the circuit, with ex parte communications that Graham claimed resulted in the improper revocation of his appointment as acting circuit judge. He also accused State Attorney King of improperly securing the revocation because of King's displeasure with Graham's decisions in a circuit court case. (A 32)

6. In another DUI case, *State v. Webb,* Graham accused a captain and an investigator in the sheriff's office of "trading official actions for other beneficial acts by the defendant" in releasing the defendant on his own recognizance. (A 33)

7. As presiding judge in the case *State v. Riggs,* a contempt of court proceeding, Graham, in open court, accused the defendant and an assistant public defender of deliberately falsifying a transcript used in the defendant's appeal. (A 34)

In each of the instances described above in 1 through 7, the commission found Graham's remarks were made without a reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were without regard for the professional and personal reputations of those accused, and could reasonably tend to lessen public confidence in the integrity and impartiality of the judiciary. (A 29-34)

8-9. As presiding judge in two separate misdemeanor possession of marijuana cases, *State v. Roose* and *State v. Shirling,* Graham ordered unrepresented defendants to assist authorities in "buys and sells" of drugs as a condition of the sentences imposed. Graham had no information on the suitability or desirability of the defendants' cooperation. (A 35-36)

10. As presiding judge in *State v. Stanage,* Graham suspended a defendant's driver's license for six months. He twice asked the defendant if he wanted the sentence reconsidered and, upon receiving affirmative responses, twice increased the length of time of the suspension. (A 36-37)

11. Graham gave instructions to a sheriff's deputy about courtroom security and threatened to hold the deputy in contempt if the sheriff did not comply with the instructions. (A 38)

12. As presiding judge in *State v. Oldag,* Graham sentenced a defendant to forty hours of community service for the state

attorney's office and advised the defendant he would suspend ten hours of service if defendant washed the state attorney's car with the shirt he was wearing in court. (A 38)

13. As presiding judge in *State v. Barth,* Graham, on learning the defendant was employed as a shrimper, stated that shrimpers were unsavory people who tended to be in trouble. He then placed her on probation with the special condition that she find alternative employment. This order had no relation to the conduct for which defendant was convicted and was not reasonably related to future criminality. (A 39)

14. As presiding judge in *State v. Douglas,* a case involving misdemeanor battery on a spouse, Graham prohibited the defendant from having any contact with his children. (A 40)

With respect to each of the sentencing incidents described above, the commission found that the conditions or sentences imposed were beyond the scope of Graham's judicial authority and that he abused or grossly abused his judicial power. (A 35-40)

15. In another incident occurring in chambers, Graham berated an attorney for wearing a leather sports coat to court and offensively "poked" him in the chest. Although the attorney apologized and stated he would not wear the court again, Graham compelled the attorney to go back into the courtroom wearing another coat belonging to Graham that was several sizes too small. The attorney was greeted with laughter when he returned to the courtroom wearing Graham's coat. (A 41)

16. As presiding judge in *State v. Dobbs,* a misdemeanor case involving spray painting of vulgar graffiti, Graham imposed a sentence of six months imprisonment. When the defendant's mother questioned the fairness of the sentence, Graham accused the mother of being the problem

and then engaged the audience in a vulgar and inappropriate colloquy. (A 42)

The commission found that both incidents evidenced a lack of judicial temperament and his treatment of the attorney was a "gross abuse of his power of office." (A 42-43)

17. In *State v. Webb,* a DUI case, Graham sentenced the defendant to ninety days in jail rather than the ten days he said would otherwise be appropriate because the sheriff's office had released the defendant on his own recognizance. He directed the defendant to "tell your friends that's what you got for trading favors to get out of the Citrus County jail." (A 43-44). The Commission found this act to be vindictive and a gross abuse of power.

18. As part of his defense to the proceedings before the Commission, Graham used the prestige of his judicial office and the resources of the State to conduct a private, unofficial investigation into alleged favoritism and corruption in Citrus County. On local television, he criticized and insulted various public officials and said the Commission's investigation resulted solely from pressure exerted by his political enemies. As part of his personal investigation, Graham obtained copies of public records without paying for them. The commission stated Graham's public attacks were unfounded and impugned the impartiality of the judiciary. (A 45-46)

19. On another occasion, Graham summoned attorneys to his office in a high profile murder case saying he intended to schedule a status conference in the near future. He made it clear he wanted no news reporters present and if necessary he would force them to leave. The status conference did not occur because Graham's appointment as acting circuit judge was revoked. The commission found Graham's conduct clearly improper and contrary to Florida law relating to closure of judicial proceedings. (A 48)

The commission further found that the nineteen incidents described above were "not isolated events, but...part of a pattern of similar misconduct, characterized by [Graham's] arrogant, arbitrary and capricious abuse of the powers of his office." (A 49) The commission observed that Graham refused to testify in his own case and was evasive when called as an adverse witness. (A 50) Graham required his judicial assistant to assist him in preparation of his defense for period of ten months. (A 50) He also utilized other resources of the state in his defense. (A 51)

At least nine of the thirteen commission members agreed that Graham's "cumulative conduct in violation of Canons 1,2,3A.1 and 3A.3 of the Code of Judicial Conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office." (A 52) Under the Florida Constitution, Article V, Section 12(f), malafides, scienter or moral tupitude is not required for removal from office of judge whose conduct demonstrates a present unfitness to hold office. (A. 52)[2]

SUMMARY OF ARGUMENT

Graham's removal from the office of county judge was justified by his own conduct, the facts of which are not disputed. His arguments do not show conflict with another appellate decision, do not raise an important question of federal law, and do not demonstrate any other ground for certiorari review.

The proceeding against Graham was instigated based on his conduct as a judge, not on any impermissible basis such as freedom of speech. Although one of many instances of misconduct involved Graham's comments during a newspaper

---

2 Article V, Section 12(f), Florida Constitution, may be found at A 872.

interview, those comments were not the sole basis for his removal. Further, the impetuousness—not the content—of those comments was critical; Graham was found to have made numerous reckless and unsubstantiated remarks impugning the judiciary and public officials.

Florida's Code of Judicial Conduct can be understood by judges of reasonable intelligence. Any reasonable judge would know that closing public proceedings and abusing contempt or sentencing powers were violations of that code. Since the code *clearly* applied to almost all of Graham's misconduct, the code cannot be held to facially vague.

The Florida Constitution separates investigation and fact-finding by the commission from imposition of a disciplinary measure by the Florida Supreme Court. This arrangement does not violate due process.

Graham's hearing was fundamentally fair. He had several months to prepare. Most important, Graham never disputed the facts of his misconduct, most of which were documented by official court files. Any infrequent lapse in attentiveness by individual commission members did not rise to constitutional significance. Absolutely nothing indicates the commissioners prejudged Graham or considered anything other than the evidence.

Graham's arguments are meritless. His petition should be denied.

ARGUMENT

I.

A GRANT OF CERTIORARI IS NOT WARRANTED IN THIS CASE BECAUSE THE DECISION OF THE FLORIDA SUPREME COURT ADOPTING THE FINDINGS OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION CLEARLY JUSTIFIES PETITIONER'S REMOVAL FROM OFFICE; PETITIONER'S ARGUMENT DOES NOT DEMONSTRATE CONFLICT WITH ANY OTHER APPELLATE DECISION NOR DOES IT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW AND SO FAILS TO ESTABLISH ANY BASIS FOR CERTIORARI REVIEW UNDER RULE 10.1(b) OR (c), RULES OF THE SUPREME COURT.

The decision of the Florida Supreme Court approved the findings and recommendation of the Judicial Qualifications Committee and removed petitioner Graham from office. (A 13) The findings, as approved by the court, state *nineteen* different incidents in which Graham abused the authority of his judicial office. Seven of these incidents involved the abuse or gross abuse of his sentencing powers. Two others concerned what can only be termed wholly unwarranted harassment—in one case of a sheriff's deputy and in the other of an attorney whose attire did not meet the petitioner's sartorial standards. Several others, according to the findings, concerned the petitioner's repeated efforts to impugn the integrity of the state attorney's office and fellow judges without a reasonable factual basis.

The petition completely ignores most of these findings, particularly Graham's abuse of his sentencing authority

and the harassment of the deputy and the attorney. The arguments made mischaracterize the findings in contending that the petitioner was "selectively prosecuted" and removed for exercising his First Amendment rights, those supposedly being the right to criticize in his judicial capacity other public officials and local attorneys and to engage a courtroom audience in a crude and unjustified attack on a mother who dared question her son's treatment. Consistent with what the commission and the court found, Graham still does not comprehend that the office he held carried with it certain restraints on his behavior.

In view of the fact that most of the findings have gone unchallenged and plainly warrant his removal, and also in view of the fact that the arguments made present no important question of federal law much less a conflict with another appellate decision, this Court should deny the petition forthwith.

The argument that follows demonstrates the lack of merit in each of petitioner's stated issues.

A. The Petition Fails To Establish That The Proceeding Below Was A Constitutionally Impermissible Instance Of Selective Enforcement Of The Judicial Code. (Petitioner's Issue I)

In this argument, petitioner mainly voices his personal disagreement with the decision to proceed against him. He complains that other judges were not disciplined for allegedly improper, similar conduct. (Pet. pp. 6-8). He further complains that he was "obstructed from discovery and proving the impermissible motive of silencing his criticism." (Pet. p. 8). Finally, Graham offers the conclusory assertion that "[d]espite the discovery obstructions, the record compels a strong inference of selective enforcement." (Pet. p. 8)

The record is replete with facts establishing the grounds for petitioner's removal. None are factually contradicted in petitioner's argument. All relate to petitioner's repeated misuse and abuse of his position as a county judge and to his improper conduct while presiding over judicial proceedings. (A27) At no point do the commission's findings address Graham's conduct as a private individual.

Petitioner essentially claims that the commission "selectively" proceeded against him.[3] Consequently, decisions addressing selective prosecution are highly analogous. One claiming selective prosecution bears a heavy burden and must make a prima facie showing that he has been singled out for selective treatment based on an impermissible purpose. *United States v. Bustamonte,* 805 F.2d 201, 202 (6th Cir. 1986) (noting that a majority of the federal circuits have adopted the same test). Moreover, a prosecutor's discretion in deciding whom to prosecute is presumably exercised in good faith. *United States v. Bassford,* 812 F.2d 16, 19 (1st Cir. 1987), *cert. denied,* 481 U.S. 1022 (1987). The record submitted here, largely ignored in the petition, shows no impermissible purpose.

This Court's decision in *Wayte v. United States,* 470 U.S. 598, underscores the lack of merit in petitioner's argument. In *Wayte,* the Court addressed the selective prosecution claim raised by a man who refused to register for the draft and stated that the test for showing selective prosecution is "ordinary equal protection standards." 470 U.S. at 608. Those standards are "discriminatory effect and [motivation]...by a discriminatory purpose." *Id. See also Willhauck v. Halpin,* 953 F. 2d 689, 712 (1st Cir. 1991) (selective prosecution claimant must show that others

---

3 Petitioner's Issue I does not cite a single case on selective enforcement of the law. Moreover, of the three cases cited under that issue, not one involves the removal of a judge from office for abuse of his authority.

similarly situated were not prosecuted and the decision to prosecute claimant was motivated by an impermissible reason).

Graham does not meet either prong of the *Wayte* test. The record shows that only his judicial conduct was considered when declaring him to be unfit to hold office. Graham does not attempt to argue that the commission or the court considered anything other than his judicial conduct. He does not even suggest what the impermissible purpose might be.

Similarly, Graham fails to show discriminatory effect. All that he has shown is that other judges—whose alleged improper conduct was not so egregious or frequent—were not disciplined; and that he was removed for improper judicial conduct. As said in *Wayte:*

> All petitioner has shown here is that those eventually prosecuted...violated the law. He has not shown...prosecution on the basis of their speech.

470 U.S. at 609.

Graham's misconduct, as set forth above, established ample grounds for his removal.

B. Petitioner Was Not Removed From The Bench For Exercising His First Amendment Right to Criticize Attorneys. (Petitioner's Issue II)

Graham's argument on the second issue variously asserts that his right to free speech has been abridged and that the standards for judicial discipline are vague. (Pet. p. 12-13). If either argument was made with specificity below, the record petitioner has chosen to present to this Court does

not demonstrate such.[4] Moreover, the record conclusively refutes Graham's claim that he was removed for publicly criticizing attorneys in a newspaper interview. Remarks made during this interview became only a small part of the basis for the commission's first factual finding, that Graham "repeatedly used his position...to make allegations of official misconduct and improper criticisms...without reasonable basis." (A 27-8)

Thus, the main flaw in Graham's argument is his narrow reading of the record, particularly the reasons for his removal. In its opinion removing him from office, the Florida Supreme Court said:

> The JQC made numerous factual findings to support its conclusion that Graham's *cumulative* conduct is unbecoming...and demonstrates a present unfitness to hold office....[W]e mention only a few of the factual findings that typify his behavior and tend to erode the public's confidence in the judiciary. [e.s.]
>
> * * * *
>
> Standing alone, each individual charge might not warrant the extreme disciplinary measure of removal....Graham's *cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action.* [e.s]
>
> * * * *

(A 4-13).

---

4 Graham repeatedly objected on due process and "constitutional" grounds (A 214-308), but did not mention the First Amendment. His affirmative defenses (A 309-26) did not broach freedom of speech. Only ground five of Graham's second and fourth amended motion[s] to dismiss nominally invokes the First Amendment. (A 333, 337, 342). In closing argument, petitioner maintained that his appearance on *television* was an exercise of First Amendment rights. (A 457).

Several observations are in order. First, Graham was not removed solely for having participated in the interview. It was but one of many instances illustrating his unfitness. Moreover, the content of his remarks was not at issue. Rather, it was his willingness to make unfounded allegations, in a very public forum, that were calculated to erode public confidence in the judicial system.

Graham refuses to understand that, as a judge, his right to free speech—even outside the courtroom—is more circumscribed that the right enjoyed by an ordinary citizen. *See Gentile v. State Bar of Nevada,* 111 S.Ct. 2720, 2743 (1991) (Rehnquist, C.J., delivering the opinion of the court in parts I and II) (even outside the courtroom, lawyers in pending cases were subject to ethical restrictions on speech not applicable to ordinary citizens). If lawyers—not required to be impartial—can be restricted as to their comments on pending cases, then judges may certainly be restrained from conduct calculated to bring the judicial system into disrepute.

The cases cited by Graham lend no weight to his argument and reflect no conflict with the decision of the Florida Supreme Court. Urging that respondents fail to show a compelling state interest for the "regulation" (apparently, the code of judicial conduct), Graham first relies on *Morial v. Judiciary Commission,* 565 F.2d 295, 300 (5th Cir. 1977) (en banc), *cert. den.,* 436 U.S. 944 (1977). At issue there were Louisiana's statute and canon of judicial conduct requiring judges to resign before announcing their candidacy for nonjudicial, elective offices. Applying a "reasonable necessity standard," *id.* at 301-2, the court ultimately upheld the statute and canon, *id.* at 307, emphasizing the state's interest in ensuring that a judge would not abuse or appear to abuse the office. "Abuse of power" was an expressly cited reason (A 7) for petitioner's removal. *Morial* plainly supports respondents' decision to remove Graham.

Widmar v. Vincent, 454 U.S. 263 (1981), involved a First Amendment challenge to a state university's policy that its buildings or grounds could not be used for religious worship or teaching. The decision concluded that the state's interest in separating church and state was not sufficiently compelling to justify content based discrimination against religious speech of a student group. *Id.* at 277-8. Here, the state's interest in maintaining an impartial, and impartial-appearing, judiciary is far more compelling. Moreover, Florida's canons of judicial conduct are not content-based.

Connick v. Myers, 461 U.S. 138 (1983), does stand for the unquestioned proposition that speech on public issues is entitled to "special protection." *Id.* at 145. Even in that case, the firing of an assistant state attorney—who circulated a questionnaire concerning internal office affairs—was upheld. The one matter of public interest—pressure on employees to work in political campaigns—was analyzed from a First Amendment perspective. This Court struck a balance between the state's interest in maintaining close working relationships and the questionnaire's minimal First Amendment implications, concluding that:

> The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships.

Id. at 154.

Here, Graham's responses to questions were a broad and ill-founded attack on the local bar.[5] They were but one of

---

5 For purposes of this response, it will be assumed that Graham's remarks addressed a matter of public concern.

numerous actions that the Florida Supreme Court held indicative of Graham's unfitness to hold office. Notably, the Florida Supreme Court did not rely on the content of Graham's speech, and Graham does not dispute the fact that he made the comments. Graham fails to grasp that his extreme impetuousness—not the content of his speech—was the real ground for his removal. Given the numerous findings—most of which are not challenged—Graham would have been removed absent the interview. *See Scott v. Flowers,* 910 F.2d 201, 209 (5th Cir. 1990) ("[A] public employee who is discharged...for engaging in constitutionally protected conduct is not entitled to any relief if the employer can prove it would have taken the same action absent that conduct.") (*citing Mt. Healthy City School Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274 [1977]).

Scott provides useful guidance. There, a Texas justice of the peace—a low level judicial office—wrote an open letter which attacked the local "district attorney's office and the county court-at-law for dismissing so many traffic appeals and called upon the county officials to offer suggestions to remedy the problem." *Id.* at 204. The letter was publicly circulated. The Texas Commission on Judicial Conduct then took action and reprimanded Scott for casting public discredit on the judiciary and for being insensitive to litigants. *Id.* Ultimately, the Fifth Circuit reversed. *Id.* at 213.

The critical difference between *Scott* and this case is obvious: the number and type of Graham's actions leading to his removal. The only specific reason for Scott's reprimand was his open letter—the reprimand itself only generally described his insensitivity. *Id.* at 205., n. 6. In contrast, Graham was removed for numerous incidents of abuse of office, misuse of contempt powers, closing public proceedings, etc.

Graham's last case is *Judicial Inquiry and Review v. Snyder,* 523 A.2d 294 (Pa. 1987). He relies on a concurring

and dissenting opinion in that case for the undisputed proposition that removal of a judge is a "matter of gravest possible concern." *Id.* at 300 (McDermott, J., concurring and dissenting).

However, the majority opinion in *Snyder* supports respondents. There, the Pennsylvania Judicial Inquiry and Review Board recommended Judge Snyder be removed. The Board found Snyder held improper ex parte conferences in a case; and, in that case, committed numerous improprieties. *Id.* at 295. The specific improper acts (*id.* at 296-7) led to the conclusion that Snyder violated several judicial canons. The Pennsylvania Supreme Court ordered removal based on the "cumulative effect" of Snyder's actions. *Id.* at 299. Similarly, the Florida Supreme Court expressly based its decision to remove on Graham's "cumulative conduct." (A 4, 12) Even if the newspaper interview were not considered, the Florida Supreme Court would still have found eighteen incidents of improper conduct. The cumulative effect of these incidents plainly warranted Graham's removal.

C. Petitioner Fails to Demonstrate That The Florida Code of Judicial Conduct Is Unconstitutionally Vague Or That The Point was Properly Preserved for Review (Petitioner's Issue III)

Before this Court, Graham's issue statement proclaims the Florida Code of Judicial Conduct is "vague." He does not specify which provisions of that code are vague. Graham's vagueness claim before the Commission was equally ambiguous. There, he broadly declared that the code was "so vague that a reasonable person would not be put on notice of what conduct is prescribed." (A 1055)

Preliminarily, respondents note that Graham's issue statement challenges the judicial code "as applied." At no time

below did Graham make this challenge. He simply and broadly claimed the entire code was vague. Even before this Court, he does not focus on any particular provision of the code and that provision's application under the facts. To the contrary, he always refers to the code generally. He then mounts a defense based in part on "hypothetical circumstances" (Pet. p. 18) that do not correspond to the facts of his case.

Two observations are in order. First, Graham's vagueness claim before the Commission was not made with any specificity. At most, it preserved only a claim of facial vagueness of the code.[6] Second, if Graham preserved a vagueness-as-applied argument[7] he has abandoned that argument by not raising it before this Court. Respondents cannot fairly be expected to answer precisely what are at best amorphous allegations.[8] Therefore, respondents will treat Graham's claim as one challenging the facial vagueness of the judicial code.

On its face, the Code of Judicial Conduct does not purport to restrain constitutionally protected conduct. The canons—1, 2, and 3(A)(1) and (3)—under which Graham was charged declare:

---

6 Respondents assume Graham challenges only that part of the code he was charged with violating. He is obviously unaffected by the remainder.

7 Graham certainly is capable of making this distinction. In Issue II, he focuses on one ground for removal as the basis for his First Amendment claim.

8 The test for vagueness as applied has two parts: (1) whether a statute gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited; and (2) whether the law provdes explicit standards for those who apply it. *U.S. v. Schneiderman*, 968 F.2d 1564, 1568 (2d Cir. 1992), *cert. den.*, 113 S.Ct. 1283 (1993) [citations omitted]. Since Graham has never stated specific vagueness claims against any particular provision of the code, respondents cannot be expected to speculate the nature of his vagueness-as-applied argument and apply the exacting two-part test discussed in *Schneiderman*.

> Canon 1: A judge should uphold the integrity and independence of the judiciary.
>
> Canon 2: A judge should avoid impropriety and the appearance of impropriety in all his activities.
>
> Canon 3(A)(1): A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
>
> Canon 3(A)(3): A judge should be patient, dignified, and courteous to litigants [etc.]...with whom he deals in his official capacity, and should require similar conduct of lawyers, and...others subject to his direction and control.

None of the above canons facially attempts to regulate the content of a judge's speech. To the contrary, the code is primarily directed toward judicial misconduct. *See, Hastings v. Judicial Conference of U.S.,* 829 F.29 91, 106 (D.C. Cir. 1987), *cert. den.,* 485 U.S. 1014 (1988) (legislative history of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 revealed that the Act was "directed toward serious judicial transgressions, not against protected speech").

This Court has upheld employee codes, provisions of which are at least as general as the judicial code, against claims of vagueness and overbreadth, ruling that such claims are best addressed through case-by-case analysis of specific fact situations. *Broaderick v. Oklahoma,* 413 U.S. 601, 615-616 (1973). If anything, Graham's petition assiduously avoids analyzing the specific reasons for his removal.

Graham must show, therefore, that the code is "impermissibly vague in all of its applications." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 495 (1982) (construing a statute); *U.S. v. Schneiderman,* 968

F.2d 1564, 1567-8 (2d Cir. 1992), *cert. den.*, 113 S.Ct. 1283 (1993) (to be facially vague, a statute must be impermissibly vague in all of its applications). Conversely, if Graham's conduct clearly fell within the code's prohibitions, then he cannot challenge it for vagueness. *See Parker v. Levy*, 417 U.S. 733, 756 (1974) ("One to whose conduct a statute clearly applies may not challenge it for vagueness").

Graham's argument is expressly based, in part, on hypothetical application of the code to others. As Graham states: "The deponents were tested to determine whether hypothetical circumstances were prescribed by the Code." (Pet. p. 18) Graham's hypotheticals are irrelevant, however, because this Court must examine Graham's own conduct "before analyzing other hypothetical applications of law." *Hoffman Estates*, 455 U.S. at 495. Any fair reading of Graham's conduct reveals that the code very clearly applied to him. Notably, Graham does not dispute the factual basis of any of the commission's findings. As the commission stated, the "vast majority of the allegations were proven by official court records." (A 48)

"Objections to vagueness under the Due Process Clause rest on lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk." *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988). Graham cannot be heard to say he did not know the vast majority of his actions were "at risk."

In sum, Graham's ambiguous vagueness claim, nominally a challenge as applied, is actually a facial attack on the code. It must fail, first, because the code is not shown to be impermissibly vague; and, second, because any reasonable judge would know that Graham's many acts (as found by the commission) were proscribed.

D. The Structure of Florida's Judicial Disciplinary Mechanism Does Not Violate Due Process (Petitioner's Issue IV)

Graham complains that Florida's mechanism for disciplining of judges violates due process. That mechanism, established by Art. IV, § 12 Florida Constitution, provides that the commission investigate complaints against judges, and recommend removal or lesser disciplinary measures to the Florida Supreme Court. At least nine of the thirteen commission members must vote in favor of recommending a specific sanction. Art. IV, § 12(f). The Florida Supreme Court, by majority vote, acts upon the commission's recommendations.

Graham's argument has an obvious and basic flaw. While the commission performs an investigative and fact-finding role, it is the Florida Supreme Court (as "judge") that decides the appropriate penalty. That court is not bound by the commission's recommendation.

Graham's "Fourth Amended Motion to Dismiss" (A 801-67) did not raise the issue raised here. At most it made the conclusory allegation that the commission was an "unconstitutional institution" (A 802, 829-30) which lacked jurisdiction. (A 830) Otherwise, Graham's fourth motion to dismiss indulged in a lengthy diatribe against every procedural aspect of his hearing. (A 805-29) Overall, the motion attributes the proceeding to a conspiracy by "the local Bar, the local press, the local politicians, and the sheriff [who] do not like him and want his removal." (A 805). Only in his "Third Memorandum of Law in Support of Second Motion to Dismiss" does Graham tersely complain about the commission's combined investigative and fact finding roles. (A 997-8).

Graham's argument on this issue does not address the structure and role of the commission but, instead, objects to

the procedural and evidentiary rulings made at his hearing. His reliance on *Withrow v. Larkin,* 421 U.S. 35 (1975), further illustrates the weakness of his argument. In *Withrow,* this Court discussed several precedents rejecting due process claims based on the combination of investigative and investigatory functions. *Id.* at 1465-7. The only exception was the decision of *In re Murchison,* 349 U.S. 133 (1955). There, a state law authorized a judge to sit as a one person grand jury, compel testimony in secret, charge witnesses with contempt, and then try and convict those witnesses. 349 U.S. at 53. This court declared there was nothing in *Withrow* that fell within the strictures of *Murchison.*

As was found determinative in *Withrow,* 349 U.S. at 54, there is nothing in the record indicating the commission or Florida Supreme Court had prejudged Graham. While the *Withrow* court recognized the need to be alert to possible bias from how "particular procedures actually work in practice," it also said the "processes used by the Board, however, do not in themselves contain an unacceptable risk of bias." *Id.* Nothing in the Florida Constitution or in the commission's rules, however, contains an unacceptable risk of bias, and Graham does not so argue. The Florida Constitution separates investigation and fact-finding from adjudication.

Graham also contends that "[l]ess egregious conduct" (Pet. p. 24) warranted reversal in *U.S. v. McClain,* 823 F.2d, 457 (11th Cir. 1987). The most cursory examination of *McClain* reveals its total inapplicability. That case involved a federal RICO and drug dealing trial. The defendant faced severe criminal penalties. Defense counsel had a conflict of interest. *Id.* at 1463-4. One co-defendant's guilty plea was admitted into evidence without an instruction properly limiting its use. *Id.* at 1466. The trial court erred by failing to sever unrelated criminal charges. *Id.* at 1467. All of this was in addition to conduct-of-trial errors by the judge and prosecu-

tor, the cumulative effect of which also denied the defendants a fair trial. *Id.* at 1462.

Nothing of the sort occurred here. Initially, this was a judicial disciplinary proceeding that could impose no criminal sanctions or fines. There was no defense counsel as Graham chose to represent himself. Admissibility of evidence was not at issue.

Whatever the merit of Graham's argument, it goes only to the propriety of his hearing. It has no bearing on the facial validity of Florida's constitutional provisions for discipline of judges. On *this* issue, Graham has failed to adduce any authority supporting the argument that the combined investigative and fact-finding roles of the commission facially violate due process.

E. The Proceeding Against Graham Was Not Fundamentally Unfair. (Petitioner's Issue V)

As a Parthian shot, Graham broadly takes issue with nearly all rulings, evidentiary and procedural, made during his hearing. His conduct at the hearing—characterized as "deplorable" by the dissenting member of the Florida Supreme Court—demonstrated what Graham's argument to this Court implies. Graham wanted not a fair hearing, but the most protacted proceeding imaginable.

Even Graham's argument before this court belies his position. In Issue IV, he claims that "[n]o less than 65 times Petitioner was not allowed to proffer legal objections or argument." (Pet. p. 24). To believe that any presiding officer would capriciously refuse so many proffers or arguments, if they were plausible, strains common sense. Rather, it is much more reasonable to conclude that Graham—as noted by Justice McDonald—"presented large amounts of irrelevant evidence,

constantly challenged the chairman of the commission, and made numerous unnecessary objections." (A 15-16).

While Graham's conduct, however bad, could not justify a hearing that was inherently unfair, that conduct certainly explains the terseness of some of the presiding officer's responses. Moreover, it must be noted that Graham has very selectively culled a small number of favorable-sounding fragments from a hearing transcript comprised of close to 3,000 pages.[9]

It is telling that, once again, Graham fails to adduce authority supporting his position. Instead, he cites to *Offutt v. U. S.*, 348 U.S. 11 (1954), which reversed a contempt conviction imposed by a judge who became personally embroiled with counsel. The factual and legal irrelevance of *Offutt* is obvious. Graham's only other authority is *In re Kelly*, 238 So.2d 565 (Fla. 1970). There, a Florida judge was found by the Judicial Qualifications Commission to be guilty of conduct "unbecoming a member of the judiciary." *Id.* at 566. Strikingly similar to this case, Kelly's guilt was predicated on a "pattern" of hostility toward:

> many attorneys, court officials, and fellow judges, as well as a concerted effort to pamper the public and news media by press releases designed to bolster his personal image at the expense of the judiciary.

Id.

Rejecting Kelly's First and Fourteenth Amendment challenges to the proceedings against him, the Florida Supreme Court contrasted the JQC's action with a criminal prosecution. It noted that the commission, and the effects of its action, had no attributes of a criminal proceeding. *Id.* at 569-70.

---

9 At page 306 of the appendices to Graham's petition for certiorari, there is a cite to page 2721 of the hearing transcript.

Kelly also challenged his proceedings on due process grounds. The court noted he had counsel, and that:

> the hearing afforded petitioner met all the standards of judicial procedure. The findings of the Commission were not made until after a fair investigation and with such notice, hearing and opportunity to answer for the petitioner as would constitute due process.

Id. at 571. Here, Graham brings no challenge to the investigatory part of the commission's actions. As noted by the Florida Supreme Court, he had five and one-half months to prepare for his hearing. (A 10). Graham filed and voiced numerous objections, motions to dismiss, and affirmative defenses. Even his fragmented rendering of the record shows only that his oft-repeated objections were tersely overruled.

Otherwise, Graham complains about alleged conduct of individual commissioners, such as reading the newspaper or falling asleep during the "proceedings." Assuming that all of the acts occurred during the presentation of evidence—as opposed to during a recess or proffer—does not help him. Nothing indicates the individual members were biased or otherwise not performing their duties. Taken in isolation, these brief lapses in, at most, the appearance of attentiveness do not rise to fundamental unfairness, and Graham cites no authority for such a conclusion.

Procedural due process requires that a "judge be given notice of proceedings against him or her, that a judge be given an opportunity to be heard, and that the proceedings against a judge be essentially fair." *In Re Inquiry Concerning a Judge: Harvey N. Shenberg, et al.*, 1992 WL 63094 (Fla. Apr. 2, 1992). Additionally, Art. 4 § 12(d), *Fla. Const.*, provides that the commission shall adopt rules regulating its proceedings. The commission has adopted, and the Florida Supreme Court has

approved, such rules. 485 So.2d 1116 (Fla. 1984). Rule 16 provides a judge with various procedural rights in order to insure a fair hearing. In this case, Graham was given notice of the proceedings and an opportunity to be heard. The rules were followed. The proceedings were fair.

Graham received notice of the investigation and a reasonable opportunity to be heard. That he chose to use his time unwisely and inappropriately by attempting to *voir dire* the commission and challenge its authority is not a basis for a claim of violation of his due process rights. If Graham was indeed unprepared for his hearing, it was not because the commission failed to afford him adequate time to prepare; it was because of the decisions he made and actions he undertook as his own counsel, such as filing a meritless complaint in federal court on the eve of the hearing. The complaint was dismissed. *Graham v. Wigginton,* 818 F.Supp. 336 (M.D.Fla. 1993). *See In re Taunton,* 357 So.2d 172 (Fla. 1978) (three and one-half months between commencement of formal proceedings and the hearing provided ample time for a non-lawyer county judge to obtain counsel and prepare a defense to charges.)

The members of the commission sat through eight days of hearing in this case. The record of the hearing is replete with Graham's constant efforts to delay and impede the hearing. The fact that some of the commissioners may have talked among themselves or glanced at a newspaper during these periods of intentional delay is not a violation of Graham's right to due process. It is not a reason for this Court to reject the commission's thoughtful findings, conclusions and recommendation.

Finally, respondents emphasize that Graham has never disputed the factual basis for his removal. He could hardly do so with credibility, as many of his actions were reflected

in official court records; or in audio and video tapes of court proceedings. (A 30-48).[10]

CONCLUSION

Petitioner has failed to demonstrate any basis for this Court to grant a writ of certiorari, and, accordingly, the Court should deny the petition.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

LOUIS F. HUBENER
Assistant Attorney General
Counsel of Record
Florida Bar No. 014008

CHARLIE MCCOY
Assistant Attorney General
Florida Bar No. 0333646

DEPARTMENT OF LEGAL AFFAIRS
The Capitol – PL-01
Tallahassee, FL 32399-1050
(904) 488-9935

---

10 The Commission concluded that the "vast majority of the allegations were proven by official court records" (A 48), and that other allegations were proven by stipulated evidence. (A 49).